

# CWI DISCRIMINATION INVESTIGATION AND RESOLUTION GUIDELINES

---

## INITIAL REVIEW

In any situation where the College of Western Idaho (CWI) receives notice of alleged policy violation associated with the Respectful Community Policy or identifies possible violations, steps will be taken to investigate and address as appropriate. If a Reporting Party makes CWI aware of a perceived violation of the Respectful Community policy there are two avenues for resolution: formal and informal resolution process. The Reporting Party has the option to proceed informally, when permissible. In cases involving allegations of sexual assault, informal resolution process is not appropriate, even if both the Reporting Party and Respondent indicate a preference for informal resolution process. The Title IX Coordinator or a designee is available to explain the informal and formal resolution processes.

CWI encourages prompt reporting, but does not limit the timeframe for filing a report. Complaints can be submitted at any time following an incident. To most effectively respond to and address reports information provided should include all relevant details needed to determine what occurred and to resolve the situation. This includes the names of the respondent (if known), the reporting party, other students and employees involved in the incident, as well as relevant facts, including the date, time, and location.

## TIME FRAMES FOR RESOLUTION

The College seeks to resolve all reports of discrimination, harassment, or sexual misconduct within sixty (60) days, if not sooner. All time frames expressed in this procedure are meant to be guidelines rather than rigid requirements. Circumstances may arise that require the extension of time frames, including extension beyond sixty (60) days. Such circumstances may include the complexity of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening school break or vacation, or other unforeseen circumstances.

In general, a Reporting Party and Respondent can expect that the process will proceed according to the time frames provided in this procedure. In the event that the investigation and resolution exceed this time frame, the College will notify all parties of the reason for the delay and the expected adjustment in time frames. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

At the request of law enforcement, the College may agree to temporarily delay its fact-gathering until after the evidence gathering stages of a criminal investigation. The College will nevertheless

communicate with the Reporting Party regarding their rights, procedural options, and the implementation of interim measures to ensure safety and well-being. The College will promptly resume and complete its fact-gathering as soon as law enforcement has completed its evidence gathering stage of a criminal investigation.

## **INFORMAL PROCESS**

If the Reporting Party, the Respondent, and the Title IX Coordinator or a designee all agree that an informal resolution should be pursued, the Title IX Coordinator or a designee shall attempt to facilitate a resolution of the conflict that is agreeable to all parties. Under the informal process the Title IX Coordinator or a designee shall be required only to conduct such fact-finding as is useful to resolve the conflict and as is necessary to protect the interests of the parties, CWI and the community. Typically, the informal resolution process will be completed within twenty (20) days, if not sooner of receipt of the complaint. If it becomes necessary to extend the process, both parties will be notified of a revised expected resolution timeframe.

A Reporting Party or Respondent always has the option to request moving to the formal resolution process. The Title IX Coordinator also always has the discretion to initiate the formal resolution process. If at any point during the informal process, the Reporting Party, the Respondent, or the Title IX Coordinator or a designee wishes to cease the informal process and to proceed through formal grievance procedures, the formal process outlined below will be invoked.

The informal resolution must adequately address the concerns of the Complainant, as well as the rights of the Respondent and the overall intent of CWI to stop, remedy and prevent policy violations associated with the Respectful Community Policy. (Informal actions might include, but are not limited to: providing training to a work unit; having an informal discussion with an individual whose conduct, if not stopped, could rise to the level of discrimination, or hostile environment harassment; having a confidential conversation with a supervisor or instructor, or suspension if both parties agree).

## **FORMAL PROCESS**

**STEP 1:** Title IX Coordinator or a designee discusses concerns with Reporting Party, and the Respondent as appropriate, including providing information about policy, procedures and other helpful resources.

The Title IX Coordinator or a designee also considers whether immediate or interim actions or involvement of other CWI departments is appropriate. The Title IX Coordinator or a designee determines whether their group has jurisdiction to investigate the matter. The Title IX Coordinator or a designee only has jurisdiction to investigate complaints or behavior related to discrimination, harassment, sexual misconduct, stalking, and retaliation as associated with the Respectful Community Policy.

OPTION 1: If the Title IX Coordinator or a designee determines that there is no jurisdiction, assistance will be offered the Reporting Party and, as appropriate, the Respondent, in finding appropriate campus and off-campus resources for addressing the issue of concern.

OPTION 2: If the Title IX Coordinator or a designee determines that there is jurisdiction, the case will proceed to Step 2.

**STEP 2:** Title IX Coordinator or a designee conducts or oversees the conducting of a thorough, fair and reliable investigation of the alleged policy violation and proceeds to Resolution process. Typically an investigation will be completed within thirty (30) days, if not sooner of receipt of the complaint. If it becomes necessary to extend the process, both parties will be notified of a revised expected resolution timeframe. Respondents will have the opportunity to review and respond to evidence considered against them. Both parties will have the opportunity to review and provide comments to the investigator about the written investigation report before it is finalized.

The Reporting Party and the Respondent may each have a “support person” present at all interviews in which they participate. Individuals acting as a “support person” will not be allowed to participate during the interview and are present as an observer only. This procedure is not a legal proceeding and as such Reporting Party and Respondent are not able to be represented by another individual.

## RESOLUTION

The Title IX Coordinator or a designee determines whether there is a preponderance of the evidence to believe that an individual engaged in a policy violation. This “preponderance of the evidence” standard requires that the evidence supporting each finding be more convincing than the evidence in opposition to it.

In making the determination of whether harassment has created a hostile environment, the conduct must not only be unwelcome to the Reporting Party, but also severe, persistent or pervasive, that a reasonable person in the Reporting Party’s situation would have perceived the conduct as unwelcome, and the discrimination resulting from the hostile environment created a limitation or denial of opportunities, benefits or activities. The case findings will be in writing and will be provided to both the Reporting Party and to the Respondent(s).

*Option 1:* If the Title IX Coordinator or a designee finds a preponderance of the evidence of a policy violation does not exist, the matter is documented and closed.

*Option 2:* If Title IX Coordinator or a designee finds that a preponderance of the evidence of a policy violation exists, the case’s written report will include recommendations for steps to take to prevent recurrence of any such violation, and as appropriate, sanctions for the Reporting Party. Any Institution wide preventative and remedial actions to address policy violation will be the responsibility of the Title IX Coordinator or designee to address.

The written finding will be provided to the appropriate Discipline Authority and determine the appropriate individual sanctions in collaboration with the Title IX Coordinator or designee. In the case of student Respondents, the Discipline Authority will be the Dean of Students. In the case of employees, the Discipline Authority is the CWI Administrator with the authority to impose sanctions in accordance with applicable employment policies and procedures. The Title IX Coordinator or a designee will inform the Reporting Party of the sanctions as permitted by applicable Title IX and privacy laws and document the final results in the case file.

## **PRIVACY**

The Title IX Coordinator or designee attempts to balance the needs of the parties for privacy with the responsibility of ensuring a safe educational environment and workplace. Privacy is an aspiration, but is not always possible or appropriate. An individual's requests regarding the confidentiality of reports of discrimination or sexual misconduct will be considered in determining an appropriate response; however, such requests will be considered in the dual contexts of CWI's legal obligation to ensure a working and learning environment that is free from discrimination or sexual misconduct and the due process rights of the accused to be informed of the allegations and their source. Some level of disclosure may be necessary to ensure a complete and fair investigation.

There are confidential resources available on campus. For more information regarding confidential reporting resources please refer to the CWI Title IX webpage.

## **RETALIATION**

CWI recognizes the right of students and employees to use the grievance procedure without fear of or concern for retaliation. Retaliation in any manner against an individual for filing a charge or initiating a report or complaint, or participating in an investigation, is expressly prohibited and subject to appropriate remedy or sanction. Reasonable steps will be taken to protect the Reporting Party, Respondent and other potential participants from further unlawful retaliation.

## **REQUEST FOR NO INVESTIGATION**

If a reporter or survivor requests that an investigation not be conducted, the Title IX Coordinator or a designee will consider the reasons for the request, including concerns about continued safety of the person reportedly harmed and members of the campus community. The determination not to investigate must also balance considerations about the continued health and safety of members of the community against a reporter's or survivor's desire not to have the report investigated. In cases when a reporter or survivor does not want to have a report investigated, but the Title IX Coordinator or a designee has concerns that not taking formal or informal action will endanger the health or safety of members of the campus community, the Title IX Coordinator or a designee will initiate private consultation with appropriate individuals to analyze the situation and assist in determining appropriate

measures to take. Consultation may occur with College leadership, chair(s) of the Campus Assessment Resource and Education (CARE), and legal counsel. The Title IX Coordinator will make the ultimate decision about whether to conduct a formal investigation or respond to the report in another manner. Remedial assistance will be provided with or without a formal investigation.

## **APPEALS**

A request for an appeal of the finding may be filed by either Reporting Party or Respondent and must be filed with the Title IX Coordinator or a designee within five (5) working days, of the receipt of the final report decision, unless good cause can be shown for an extension of time. The request must be in writing and must describe the appellant's desired outcome; as well as describe how the appellant believes that:

1. Previously unavailable relevant evidence becomes available that would affect the outcome of the case;
2. Those investigating
  - a. failed to conduct a thorough investigation;
  - b. issued arbitrary findings and recommendations; or
  - c. had a conflict of interest. Please refer to the [CWI Policy and Procedure Manual](#) for additional information regarding conflict of interest.

Disagreement with the findings or recommended sanctions is not, by itself, grounds for appeals.

The Title IX Coordinator, Deputy Coordinators, or other individuals appointed by the Title IX Coordinator with appropriate training will review appeals along with the final investigation finding report and determine if the grounds for appeal have been met. The corresponding Respondent or Reporting Party will be notified as to the request. A quorum of no less than three members of this group not previously associated with the investigation will determine if the findings and recommendation should be approved, overturned, or modified. This determination must be supported by a majority of the group members voting. If an appeal causes a significant delay the Title IX Coordinator will maintain interim measures currently in place and consider additional measures to continue to protect the parties during the process.

The Title IX Coordinator or a designee will inform the parties of the final determination related to the appeal as permitted by applicable Title IX and privacy laws and document the appeal in the case file. This appeals decision is final for all parties involved in the investigation.

## **EXTERNAL COMPLAINTS**

If you are a student or employee and filed a complaint with the Title IX Coordinator or a designee and believe the response was inadequate, or as a student, you otherwise believe you have been discriminated against by the CWI on the basis of race, color, national origin, sex, including sexual harassment, disability age, or retaliation, you may file a complaint with the Office for Civil Rights (OCR)

of the U.S. Department of Education based in Seattle, Equal Employment Opportunity Commission in Seattle, or the Educational Opportunities Section (EOS) of the Civil Rights Division of the U.S. Justice Department of Justice, and a complaint based on religion with EOS of the U.S. Justice Department.

<p><b>U.S. Department of Education</b>  <b>Office of Civil Rights (OCR)</b>              810 3<sup>rd</sup> Avenue #750              Seattle, WA 98104              (206) 607-1600  <a href="mailto:OCR.Seattle@ed.gov">OCR.Seattle@ed.gov</a></p>	<p><b>Equal Employment</b>  <b>Opportunity Commission</b>              909 First Avenue, Suite 400              Seattle, WA 98104              (800) 669-4000  <a href="mailto:info@eeoc.gov">info@eeoc.gov</a></p>	<p><b>Educational</b>  <b>Opportunities Section</b>              (202) 514-4092              1-877-292-3804 (toll-free)              (202) 514-8337 (Fax)              Email: <a href="mailto:education@usdoj.gov">education@usdoj.gov</a></p>
--	---	--

## ADDENDUM 1: DEFINITIONS

### DISCRIMINATION

*Discrimination* is conduct that is based upon an individual’s race, color, religion, sex, national origin, sexual orientation, gender identity, disability status, protected veteran status, or any other characteristic protected by law that excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual’s employment, education, or participation in a CWI program or activity. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.

### HARASSMENT

**Harassment** is covered under this policy if it is based upon an individual’s race, color, religion, sex, national origin, sexual orientation, gender identity, disability status, protected veteran status, or any other characteristic protected by federal, state, or local law. Harassing conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Sex-based harassment includes sexual harassment, which is further defined below, and non-sexual harassment based on stereotypical notions of what is female/feminine v. male/masculine or a failure to conform to those gender stereotypes.

- A. Sexual Harassment** encompasses unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, including sexual assault and can involve persons of the same or opposite sex.

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

- Tangible Employment or Educational Action

This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, or participation in a College 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 CWI program or activity. Generally, perpetrators will be agents or employees with some authority from the College.

- Hostile Environment

Sexual harassment that creates a hostile environment occurs when the unwelcome behavior:

- 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 Colleges programs, services, opportunities, or activities ; or
- when such conduct has the purpose or effect of unreasonably interfering with an individual's employment.

Harassment that creates a hostile environment ("hostile environment harassment") violates this policy.

A hostile environment can be created by anyone involved in a CWI 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.

In determining whether harassment has created a hostile environment, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. Also, the following factors will be considered:

- the type, frequency, and duration of the conduct;
- the identity and relationships of persons involved;
- the number of individuals involved;
- the location of the conduct and the context in which it occurred;
- the degree to which the conduct affected one or more student's education

### *SEXUAL MISCONDUCT*

*Sexual Misconduct* is a broad term encompassing a range of nonconsensual sexual activity or unwelcome behavior of a sexual nature. The term includes but is not limited to sexual assault, sexual exploitation, relationship violence, and stalking.

- A. *Sexual Assault* means an actual or attempted sexual contact with another person without that person's consent. Sexual assault includes, but is not limited to:
- Involvement in any sexual contact when the survivor is unable to consent.
  - Intentional and unwelcome touching of, or coercing, forcing, or attempting to coerce or force another to touch a person's intimate parts (defined as genital area, groin, inner thigh, buttocks, or breast).
  - Sexual intercourse without consent, including acts commonly referred to as "rape."
- B. *Sexual Exploitation* occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without that person's consent. Examples of behavior that could rise to the level of sexual exploitation include:
- Prostituting another person;
  - Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
  - Non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
  - Going beyond the bounds of consent (such as letting your friends hide in the closet to watch you having consensual sex);
  - Engaging in non-consensual voyeurism;

- Knowingly transmitting an STI, such as HIV, to another without disclosing your STI status;
- Exposing one's genitals in non-consensual circumstances, or inducing another to expose his or her genitals;
- Possessing, distributing, viewing or forcing others to view illegal pornography;

C. *Relationship Violence* often referred to as dating violence or domestic violence is abuse or violence between partners or former partners involving one or more of the following elements:

- Battering that causes bodily injury;
- Purposely or knowingly causing reasonable apprehension of bodily injury;
- Emotional abuse creating apprehension of bodily injury or property damage;
- Repeated telephonic, electronic, or other forms of communication -- anonymously or directly -- made with the intent to intimidate, terrify, harass, or threaten;

### *CONSENT*

*Consent* is informed, freely given, and mutual. If coercion, intimidation, threats, or physical force are used there is no consent. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption, or being asleep or unconscious. There is no consent when there is force, expressed or implied, or use of duress or deception upon the survivor. Silence does not necessarily constitute consent. Past consent to sexual activities does not imply ongoing future consent. Whether an individual has taken advantage of a position of influence over an alleged survivor may be a factor in determining consent.

### *STALKING*

*Stalking* means conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others' safety, or to suffer substantial emotional distress. Examples of behavior that could rise to the level of stalking includes repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death.

### *RETALIATION*

*Retaliation* is action taken by an accused individual or an action taken by a third party against any person because that person has opposed any practices forbidden under this policy or because that person has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy. This includes action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy.

### *PREPONDERANCE OF EVIDENCE*

This standard of evidence asks decision-makers to consider whether it is more likely than not that a violation of policy occurred. This standard is lower than "beyond a reasonable doubt" which is typically seen in criminal systems.