

**WESTMONT COLLEGE  
POLICY AND PROCEDURES ON  
UNLAWFUL DISCRIMINATION, UNLAWFUL HARASSMENT, AND SEXUAL ASSAULT**

Westmont College values diversity and is committed to providing a diverse learning, living and working environment consistent with its mission and heritage, both of which are deeply rooted in the evangelical Christian faith tradition. In all of our actions, we seek to affirm every individual as created in the image of God, worthy of dignity and respect. While the college lawfully exercises the right to seek and hire faculty and staff co-religionists at all levels of employment and hold members of its community to conduct standards that are consistent with its established faith-based tenets,<sup>1</sup> the college will not tolerate unlawful discrimination or harassment in any of its programs, practices or policies; nor will it tolerate retaliation against any individual for making a complaint, for participating in the investigation of a complaint, or for otherwise opposing unlawful conduct as described in this policy and the procedures that follow.

**SCOPE OF POLICY**

This policy applies to all members of the campus community, independent contractors, applicants for employment and admission and guests to the college; and to all college programs, activities and events.

**DUTY TO INVESTIGATE & TAKE CORRECTIVE ACTION**

Westmont is committed to investigate promptly any complaints received under this policy. The college endeavors to resolve complaints made under this policy within 60 days from the date the complaint is received or a complaint recipient is otherwise made aware of alleged conduct covered under this policy. However, in some cases (*e.g., complex facts; large number of witnesses; official break in the academic calendar, etc.*), an extension of that time may be necessary. The Title IX Officer will ensure that both Complainant and Respondent are informed of the status of the complaint at regular intervals.

In the cases where the Respondent is a student, or a member of the staff or faculty, the determination of whether a policy violation has occurred, the imposition of any appropriate sanctions, and the implementation of any appeal process are handled in accordance with existing procedures outlined in the relevant handbook. In all other cases, the Title IX Officer, President, Provost and Dean of Faculty, and Vice President for Student Life and Dean of Students will determine the appropriate investigation process, whether a policy violation has occurred, and any appropriate corrective action aimed at preventing any ongoing or subsequent policy violation. The college does not consider polygraph examination results in its investigations.

Where unlawful discrimination, unlawful harassment, or sexual assault is found to have occurred, the college will take appropriate action reasonably calculated to end the behavior, up to and including termination of employment, expulsion from the college, termination of contract, exclusion from admission or enrollment and employment and revocation of permission to be on college grounds or to participate in college events or activities. The person responsible for coordinating efforts under this policy is Title IX Officer Chris Call, Vice President for Administration and for Research, Planning and Implementation, Kerrwood Hall, Room 215, x6023.

**UNLAWFUL DISCRIMINATION**

Unlawful discrimination (including unlawful harassment) occurs when individuals are disadvantaged

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<sup>1</sup> See Westmont's Community Life Statement for a description of how the college's faith-based tenets shape its vision for Living in Community and its Behavioral Expectations.

and/or treated unfavorably in the terms and conditions of employment or in their academic status and/or progress based on a lawfully protected status. Westmont does not unlawfully discriminate on the basis of race, color, sex, sexual orientation, gender, gender expression, or gender identity, national or ethnic origin, genetic information, age, religion, veteran's status, disability and religion.

### **UNLAWFUL HARASSMENT**

Unlawful harassment (including sexual harassment) is a form of unlawful discrimination. It is offensive and unwelcome conduct based on a lawfully protected category that is so severe or pervasive that it creates a hostile work and learning environment. Any of the following conduct, when based on a lawfully protected status, constitutes **unlawful harassment**:

- A. Verbal: epithets, derogatory jokes, comments
- B. Visual: depictions such as drawings and pictures; gestures; email or text messages
- C. Physical: unwanted physical contact and blocking or impeding movement.

**Sexual harassment** includes the conduct previously described when the conduct is engaged in on the basis of sex. Sexual harassment also occurs when:

- A. Submission to the conduct is explicitly or implicitly made a term, condition or benefit of an individual's employment or education and/or progress in employment or education.
- B. Submission to, or rejection of the conduct is used as the basis of employment or educational decisions affecting an individual.
- C. The conduct has the purpose or effect of having a negative impact upon the individual's work or educational performance, or of creating an intimidating, hostile or offensive work or educational environment.

Mimicking an individual's mobility or speech impairment; using insulting, gender-based language to describe an individual's demeanor or style of dress; taunting an individual about their sexual orientation in a note left on an office or residence hall room door; or using derisive comments about someone's nationality in an email message are all examples of prohibited conduct.

A hostile environment occurs most often as a result of repeated instances of the types of behavior described above. However, a single instance of the described prohibited behaviors, where sufficiently severe, can amount to unlawful harassment.

### **SEXUAL ASSAULT**

Sexual assault also is a form of unlawful discrimination. Sexual assault covers a range of sexual contact and involves a determination of consent.

**Sexual Assault (Category I)** is defined as engaging in sexual intercourse with any person without that person's consent. Sexual intercourse is the penetration, however slight, of the vagina or anus with any object or body part and of the mouth with a sexual body part or sexual object. **Sexual Assault (Category II)** is defined as the act of making sexual contact with the intimate body part of another person without that person's consent. Intimate body parts include the sexual organs, the anus, the groin or buttocks of any person, or the breasts of a female.

**Consent** is defined as unambiguous and willing participation or cooperation in an act or as an attitude that is commonly understood to be consistent with the exercise of free will. Consent requires participants who are fully conscious, are equally free to act, have clearly communicated their willingness, cooperation, or permission to participate in a specific sexual activity, are positive and clear in their desires, and are able to cease ongoing consensual activity at any time. Refusal to consent does not have to be verbal; it can be expressed with gestures, body language or attitude. A prior sexual history between the complainant

and respondent does not constitute consent. Consent is not freely given if a reasonable person in the position of the alleged perpetrator at the time the alleged conduct occurred should have known that the other person was unable to give consent for any of the following reasons:

- A. The individual is unable to make an informed decision as a result of alcohol or other drugs (including but not limited to predatory drugs or prescribed medications); or
- B. The individual is unconscious, asleep, or suffering from shock; or
- C. The individual is under the age of 18 and therefore legally unable to give consent; or
- D. The individual has a known mental disorder or developmental or physical disability and therefore legally unable to give consent.

### COMPLAINT PROCEDURE

A complaint of unlawful discrimination, unlawful harassment, or sexual assault may be reported to any of the following complaint recipients: the Director or Associate Director of Human Resources, one's immediate supervisor, a department chair, a leader of an off-campus program, a Resident Director, the college's Title IX Officer, any Dean or Vice President, or the President. *(A list of the people currently occupying these positions can be found in the catalog or received from the Office of the President or the Office of Human Resources.)*

A complaint recipient will notify the college's Title IX Officer whenever a complaint of discrimination, harassment, or sexual assault has been received. The Title IX Officer shall ensure that the complainant promptly receives a copy of this Policy and is clearly informed of his or her rights to assistance.

The Title IX Officer will work with the President, Provost and Dean of Faculty, and Vice President for Student Life and Dean of Students<sup>2</sup> to ensure that:

- A. A complaint of unlawful discrimination, unlawful harassment, or sexual assault is promptly, fully and effectively investigated;
- B. Any interim measures deemed appropriate to address the physical and emotional safety of the parties involved will be taken;
- C. A determination is made whether it is more likely than not that the alleged conduct occurred; and
- D. Whatever action is deemed necessary to end the unlawful conduct will be taken.

Confidentiality for both the complainant and the accused shall be encouraged and maintained as appropriate and to the extent allowed under the circumstances and by law.

The Title IX Officer will keep the complainant and respondent informed about the process of investigating the complaint. After action on a complaint is concluded, the respondent and complainant will be notified whether or not discipline will be imposed. ***The college will not tolerate any reprisal or retaliation against someone who has submitted (or indicated an intent to submit) a complaint in good faith.***

The college's process of investigating and resolving complaints covered under this policy can be, and is, different than the process used in a criminal or a civil proceeding. As a result, judicial rules of

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<sup>2</sup> If the accused is the Title IX Officer, the Provost and Dean of Faculty, or the Vice President for Student Life and Dean of Students, then the President will be notified and help determine an appropriate investigation strategy. If the accused is the President or a member of the Board of Trustees, then the Chair of the Board of Trustees will be notified and help determine an appropriate investigation strategy. If the accused is the Chair of the Board of Trustees, then the Vice Chair of the Board of Trustees will be notified and help determine an appropriate investigation strategy.

evidence are not applicable; the college does not accept the results of polygraph tests; the standard of proof in a criminal proceeding is higher than the preponderance of evidence standard employed at Westmont and other colleges and universities. However, the college's process and that of law enforcement or civil court proceedings are not mutually exclusive. Individuals may seek assistance of law enforcement and/or civil representation. Law enforcement may take legal action based on information reported to it. In addition, the evidence gathered in a college investigation is discoverable in a civil or criminal action. Individuals with questions regarding the scope of the college's process should contact the college's Title IX Officer, Chris Call.

### **RIGHTS OF COMPLAINANTS AND RESPONDENTS**

All complainants and respondents share the following – the right to:

- Written notice of the allegations.
- A timely review of and determination regarding the complaint.
- Request class, work or residence hall adjustments during the investigation and decision-making process.
- Provide witnesses and information pertinent to the case.
- Confront opposing information that is relevant and material.
- Not have irrelevant history (e.g., sexual history) considered by the decision maker (or discussed during a student hearing).
- Not provide incriminating evidence (though the college may draw negative inferences from a person's unwillingness to cooperate or participate in resolution of the complaint).
- An individual of their choice to attend all meetings with them to support them (rather than advocate for them) throughout the process.
- Have legal counsel present. (In no case may counsel speak or take an advocacy role during an investigation or hearing.)
- Confidentiality to the extent possible. (Any individual serving as a support person or as a legal adviser participating in the proceedings under this policy is obligated to maintain the confidentiality of the nature of the allegation(s), the content of the student conduct process, and the privacy of the complainant, respondent and any witnesses. The college will remove any support person or adviser who fails to adhere to any of the expectations outlined for them in this policy.)

Additional rights for student complainants and respondents are included in the Sexual Assault Policy found in the Student Handbook.

### **RESOURCES**

Students are encouraged to take advantage as needed of campus resources -- e.g., Health and Counseling Center (additional resources for students are included in the Sexual Assault Policy found in the Student Handbook). Likewise, faculty and staff are encouraged to take advantage as needed of Employee Assistance Program benefits (including counseling and legal services) and other off-campus resources.

### **EXTERNAL COMPLAINT OPTIONS**

Westmont encourages all members of the community to report any incidents of unlawful discrimination or harassment, or of sexual assault or retaliation **immediately** so that complaints can be addressed as soon as possible. In addition, any member of the community who believes that he or she has been harassed, sexually assaulted, discriminated or retaliated against for resisting or complaining about harassment or

discrimination, may file a complaint with appropriate government agencies. Law enforcement agencies investigate claims of sexual assault and other alleged violations of criminal law. The U. S. Department of Education's Office of Civil Rights, the Federal Equal Employment Opportunity Commission, and the California Department of Fair Employment and Housing<sup>3</sup> investigate and prosecute complaints of prohibited discrimination and harassment; currently, the statute of limitations for filing a claim with these agencies is 180 days, 300 days, and one year, respectively.

*Approved by the Board of Trustees on October 22, 2016*

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<sup>3</sup> To locate the agency office location nearest you, call the following numbers: Department of Fair Employment and Housing 1-800-884-1684; Office for Civil Rights 1-800-421-3481; Equal Employment Opportunity Commission 1-800-669-4000. You may contact the Santa Barbara Sheriff's Department at 805-681-4100. You may contact the Santa Barbara Police Department at 805-897-2300. In emergency situations, please call 9-1-1.