

**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 keeping with this commitment and in accordance with applicable laws, the college prohibits unlawful discrimination and harassment and will not 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.

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 and events. The college will apply the procedures outlined below in responding to any complaints of unlawful discrimination or harassment. Westmont is committed to investigate promptly any complaints received under this policy. 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, 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 includes but is not limited to treating individuals differently in the terms and conditions of employment or in their academic status and/or progress based on a lawfully protected status.<sup>1</sup>

**UNLAWFUL HARASSMENT**

Unlawful harassment (including sexual harassment) is a form of unlawful discrimination. It is offensive and unwelcome verbal, visual or physical conduct based on a lawfully protected category that is so severe or pervasive that it creates a hostile work environment.<sup>2</sup> Unlawful harassment occurs most often as a

---

<sup>1</sup> Examples of **unlawful discrimination** include but are not limited to unequal treatment in the terms or conditions of employment or education on the basis of race, color, sex, sexual orientation, national or ethnic origin, genetic information, age, veteran's status or disability. While the college does not discriminate on the basis of religion in its admissions practice, the college exercises its legal right to seek and hire coreligionists at all levels of employment for all college positions.

<sup>2</sup> Any of the following conduct, when based on lawfully protected status such as race, color, sex, sexual orientation, national or ethnic origin, age, religion, veteran's status or disability constitutes **unlawful harassment**:

- (a) Verbal: epithets, derogatory jokes, comments or
- (b) Visual: depictions such as drawings or gestures;
- (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.

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.<sup>3</sup>

### **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>4</sup> to ensure that:

---

<sup>3</sup> **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 one of the following applies:

1. 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.

<sup>4</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.

- 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;
- d. Whatever action is deemed necessary to end the unlawful conduct will be taken; and
- e. The determination and imposition of any sanctions for students, faculty and staff, and the appeal process, is handled in accordance with existing procedures outlined in the relevant handbook; for other respondents, the determination and imposition of sanctions is handled by the Title IX Officer, President, Provost and Dean of Faculty, and Vice President for Student Life and Dean of Students.

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.***

#### **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 – i.e., to view another’s written statement and to be told of relevant and material, opposing information shared by a witness or discovered by the investigator. (“Relevant and material” means information directly related to the merits of the alleged violation that could influence the decision maker(s) in reaching a decision.)
- 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 make negative inferences from a person’s unwillingness to testify or cooperate).
- A faculty or staff member to support them (rather than advocate for them) through 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 faculty or staff member or 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.)

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 resolved quickly.

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. The nearest offices are listed in the telephone directory. 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 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 Westmont College Board of Trustees on October 24, 2015*