

WESTMONT COLLEGE

UNLAWFUL SEXUAL MISCONDUCT POLICIES AND PROCEDURES

SCOPE AND PURPOSE OF POLICY

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. The college lawfully exercises the right to seek and hire faculty and staff who are co-religionists. At all levels of employment members of its community will conduct themselves according to standards consistent with the college's established faith-based tenets.¹

In all of our actions, we seek to affirm every individual as created in the image of God, worthy of dignity and respect. The college will not tolerate unlawful harassment, discrimination or bias-related incidents 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

The college prohibits unlawful sexual misconduct, sexual discrimination, sexual harassment, domestic violence, dating violence, sexual assault, stalking, sexual exploitation, sexual violence and nonconsensual sexual contact. The college will not tolerate any of these behaviors by or against its students, faculty, or staff. In addition, applicants for admission or employment, visitors, volunteers, vendors, consultants, third parties, or any person that provides services to the college are required to comply with the provisions of this policy. All community members must comply with this policy.

When the college receives a complaint, the Title IX Coordinator will conduct an initial assessment to determine if the complaint will be addressed through this policy as a Title IX complaint or through the [Bias, Discrimination and Harassment Policy](#). This determination will include, among other things, consideration of whether the person impacted wishes to make a formal written complaint, whether the conduct occurred within an education program or activity, and whether the alleged misconduct falls within the scope of Title IX.

Misconduct that falls within the scope of Title IX includes:

- Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program, activity, educational or working environment (hostile environment)
- Sexual assault, dating violence, domestic violence, or stalking (Clery Act/VAWA offenses)

¹ 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.

- An employee conditioning aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct (quid pro quo)

Some sexual misconduct complaints may not constitute Title IX complaints, depending on the facts of the case but they might constitute sexual harassment under CA SB 493 and will be adjudicated under the applicable procedures. Further details are described below. If it is determined in the initial assessment with the Title IX Coordinator or through the process that the complaint is not a Title IX complaint, it will be addressed through the [Bias, Discrimination and Harassment Policy](#). Misconduct that may or may not be a Title IX complaint, depending on the facts, includes sexual exploitation, sexual violence and nonconsensual sexual contact, as defined below.

Dismissal of a Formal Complaint or Allegation (Mandatory and Discretionary) of a Title IX Complaint²

The college must dismiss a formal complaint or any allegations therein under Title IX if, at any time during the investigation or hearing, it is determined that:

- The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
- The conduct did not occur in an educational program or activity controlled by the college (including buildings or property controlled by recognized student organizations), and/or the college does not have control of the Respondent; and/or
- The conduct did not occur against a person in the United States; and/or
- At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the college.³

The college may dismiss a formal complaint or any allegations therein under Title IX 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 therein; or
- The Respondent is no longer enrolled in or employed by the college; or
- Specific circumstances prevent the college from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the college will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. If the complaint does not meet the above criteria, it may be addressed through the [Bias, Discrimination and Harassment policy](#).

This complaint or allegation dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

²These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

³Such a complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

PURPOSE OF POLICY

The purposes of this policy include:

- Prohibiting all forms of unlawful sexual misconduct,
- Creating an educational and work environment that is free from unlawful sexual misconduct,
- Encouraging good faith complaints when unlawful sexual misconduct has occurred, and
- Providing options for addressing and resolving complaints of unlawful sexual misconduct.

Persons who believe that they have experienced unlawful sexual misconduct or have witnessed unlawful sexual misconduct of another community member are strongly encouraged to promptly bring the conduct to the attention of one of the individuals listed in the section entitled "Report Recipients." The college will take prompt corrective action against any unlawful sexual misconduct by or against its community members. All college community members are directed to implement and abide by the procedures outlined in this policy.

All complaints will be taken seriously and the college will respond according to this policy to anyone who acts in good faith to report unlawful sexual misconduct and suffers actual or threatened retaliation or reprisal. Complaints of unlawful sexual misconduct will be treated with confidentiality to the extent feasible, given the need to conduct a thorough investigation and take corrective action.

If it is determined through an appropriate and prompt investigation that unlawful sexual misconduct has occurred, the college will take appropriate action reasonably calculated to end the behavior, and appropriately care for those who may have been harmed. Throughout the investigative process, the presumption shall be that the respondent is not responsible for the alleged conduct until a determination is made. Depending on circumstances and the severity of the conduct, corrective action will vary. Resolution steps could include a range of sanctions, up to and including expulsion (for students) and termination (for employees).

TITLE IX COORDINATOR

Dr. Edee Schulze, Vice President for Student Life, serves as Title IX Coordinator with primary responsibility for oversight and enforcement of this Policy, as well as identifying and addressing any systemic problems that arise during the review of complaints. Dr. Schulze may be contacted at (805) 565-6028 or eschulze@westmont.edu.

DEFINITIONS OF PROHIBITED BEHAVIORS

UNLAWFUL SEXUAL MISCONDUCT

Unlawful sexual misconduct is a broad and overarching term used to identify the conduct that constitutes a form of sex discrimination which violates federal and state law, including Title VII of the Civil Rights Act of 1964; Title IX; Education Amendments of 1972, CA Senate Bill 493 2020, and college policy. Unlawful sexual misconduct covers a range of sexual acts committed by one person against another by use of coercion or intimidation or when the individual does not otherwise provide consent or is incapable of providing consent for reasons of age, unconsciousness, mental impairment, or ingestion of drugs, alcohol or other substance. All unlawful sexual misconduct is prohibited and includes, but is not limited to sexual harassment, sexual violence, domestic violence, dating violence, sexual assault, stalking, and sexual exploitation. Unlawful sexual

misconduct may be categorized as a Title IX complaint depending on the facts of the situation. If so, it is adjudicated under this policy. If not, it is adjudicated under the college's [Bias, Harassment and Discrimination Policy](#).

SEXUAL HARASSMENT

Both men and women are protected from sexual harassment, whether that harassment is perpetrated by a member of the same or opposite sex. Sexual harassment may be committed by a male or a female toward either a male or a female.

Under Title IX, sexual harassment is defined as one or more of the following:

- Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program, activity, educational or working environment (hostile environment)
- Sexual assault, dating violence, domestic violence, or stalking (Clery Act/VAWA offenses)⁴
- Employee conditions aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct (quid pro quo)

Under CA SB 493, sexual harassment⁵ means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

- Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
- Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
- 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.
- 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 the educational institution.

Unwelcome sexual conduct may include, but is not limited to, the following: unwelcome sexual advances, requests for sexual favors; verbal, physical, electronic or digital conduct or communication of a sexual or gender-based nature, persistent sexual slurs or jokes; repeated requests for an unwelcome sexual relationship; gestures or sounds, a pattern of widespread favoritism based on sexual relationships; pornographic or suggestive materials offensive to others; or unwelcome sexual touching. A hostile environment can exist by virtue of a combination of individual incidents that would not, individually, constitute sexual harassment. In

⁴ "Sexual assault" as defined in 20 U.S.C. § 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. § 12291(a)(10), "domestic violence" as defined in 34 U.S.C. § 12291(a)(8), or "stalking" as defined in 34 U.S.C. § 12291(a)(30).

⁵ California Education Code sections 212.5 & 66262.5

order for these examples or other behaviors to constitute hostile environment harassment, the effect of the harassment must create an abusive or hostile environment, usually over a period of time. Under Title IX the conduct must be severe, pervasive, and objectively offensive as determined by a reasonable person. Under CA SB 493 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. Even one serious incident may, however, constitute sexual harassment, such as an occurrence of sexual assault.

Under CA SB 493 quid pro quo sexual harassment can be enacted by an employee or a student and occurs under any of the following conditions:

- Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
- Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
- 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.
- 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 the educational institution.

Examples of quid pro quo include, but are not limited to, the following: a supervisor granting a promotion to an employee because the employee unwillingly engages in unwanted sexual relations with the supervisor; a faculty member providing an undeserved failing grade to a student because the student refuses to have sexual relations with the faculty member; a student conditioning academic assistance to a fellow student based on a request to engage in unwanted sexual behavior.

SEXUAL ASSAULT

Sexual assault is a term that covers a range of forcible or nonforcible sexual acts. In general, the term "sexual assault" means any sexual act directed against another person without the consent of the person, including instances in which the complainant is incapable of giving consent. Forcible sexual acts include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification. Non-forcible sex offenses include incest and statutory rape.

DATING VIOLENCE

Dating violence is a form of sexual violence and is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The relationship existence is determined based on a consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. Dating relationship

means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

DOMESTIC VIOLENCE

Domestic violence means felony or misdemeanor crimes of violence committed against one's current or former cohabitant, spouse, former spouse, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship or any other person protected under domestic violence law.

STALKING

Stalking means a pattern of actions composed of more than one act over a period of time, however short, demonstrating a continuity of 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. Stalking includes but is not limited to unwanted letters, emails, text and telephone messages; telephone calls; unwanted gifts; following an individual or frequently appearing at locations where the individual is located.

SEXUAL EXPLOITATION

Under CA SB 493, sexual exploitation means taking non-consensual or abusive sexual advantage of another person for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited in a manner not covered under other prohibited behaviors as defined in this policy. Examples of sexual exploitation include, but are not limited to:

- the prostituting of another person;
- the trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion;
- the recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts, without that person's consent;
- surreptitiously observing another individual's nudity or intimate activity or allowing another to observe consensual intimate activity without the knowledge and consent of all parties involved;
- exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances;
- distributing, sharing or streaming of images, photography, video, or audio recording of another person's intimate activity, intimate parts or nudity if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure;
- the viewing of another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire.

Sexual exploitation may be categorized as a Title IX complaint depending on the facts of the situation. If so, it is adjudicated under this policy. If not, it is adjudicated under the college's [Bias, Harassment and Discrimination Policy](#).

SEXUAL VIOLENCE

Sexual violence is one of the most severe forms of sexual harassment. Safety is of primary concern in situations of sexual violence. Under this policy it is defined as any actual, attempted, or threatened physical sexual act with another person without that person's consent. It includes, but is not limited to sexual acts perpetrated by force (expressed or implied), or duress, deception, or coercion upon the victim. It includes acts referred to as "date rape" or "acquaintance rape." Rape is defined as penetration, no matter how slight, of the vagina or anus with any part or object, or oral copulation of a sex organ by another person, without the consent of the victim. Sexual violence also includes sexual battery which is defined as the intentional touching of another's intimate parts without consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person's own intimate part to intentionally touch another person's body without consent.

Sexual violence includes sexual acts involving a victim who is incapable of giving consent due to age, disability, or intoxication by alcohol or drugs. Sexual violence generally will constitute a crime punishable under California statutes. The use of alcohol or drugs never makes the victim at fault for sexual violence. Sexual violence may be categorized as a Title IX complaint depending on the facts of the situation. If so, it is adjudicated under this policy. If not, it is adjudicated under the college's [Bias, Harassment and Discrimination Policy](#). If it is unclear whether a hearing is required under applicable law, the institution shall decide whether or not a hearing is necessary to determine whether any sexual violence more likely than not occurred. In making this decision, an institution may consider whether the parties elected to participate in the investigation and whether each party had the opportunity to suggest questions to be asked of the other party or witnesses, or both, during the investigation.

NONCONSENSUAL SEXUAL CONTACT

Nonconsensual sexual contact is defined as the intentional 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. Some nonconsensual sexual contact may constitute sexual harassment. Generally, this is the case if the contact is brief and does not involve force or incapacitation. Nonconsensual sexual misconduct may be categorized as a Title IX complaint depending on the facts of the situation. If so, it is adjudicated under this policy. If not, it is adjudicated under the college's [Bias, Harassment and Discrimination Policy](#).

ADDITIONAL DEFINITIONS

AFFIRMATIVE CONSENT

Affirmative consent is defined as affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Affirmative consent is ongoing, 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.

* It is important to note that in the college conduct process, use of alcohol does not diminish personal responsibility or act as a mitigating factor in conduct sanctions should a violation be found to have occurred.

2. The individual has acted or spoken in a manner which expresses he or she refuses to give consent.
3. It is obtained through the use of force or through the fear of or the threat of force.

INCAPACITATED

An incapacitated person is a person unable to consent to sexual activities due to the use of alcohol or drugs impairing judgment, lack of consciousness, being asleep, developmental disabilities, or lacks full knowledge or information of what is happening. The use of drugs or alcohol by the respondent is not a defense against allegations of unlawful sexual misconduct.

REPORTING UNLAWFUL SEXUAL MISCONDUCT

The college encourages the prompt reporting of incidents covered under this policy for resolution in accordance with the procedures as described here. The college also strongly encourages individuals to make Sexual Assault reports to law enforcement officials as soon as possible. Reports to the college can be made to any individual listed in the section below entitled "Report Recipients." Prompt action under this policy allows for individuals to receive immediate medical care that may be necessary. Prompt action also allows the college and/or law enforcement to provide individuals with reasonable and necessary protection from any further harm. Preservation of evidence in a sexual assault case is also critical in the investigation. Individuals making reports under this policy should take measures to preserve forensic information related to their report (e.g., documented communication, photographs of injuries; medical examination results, correspondence such as letters, emails, telephone or text messages, gifts, etc.).

Whether to make a report under this policy to the college and/or filing a complaint with law enforcement officials can be a difficult decision. There are options available for those who do not want to make this decision

on their own. Counselors at Westmont College Counseling and Psychological Services (CAPS) are available to students who would like assistance to think through their options. Additionally, Standing Together to End Sexual Assault (STESA) -- a private, non-profit 501(c)(3) organization located in Santa Barbara -- provides confidential counseling and support services to survivors of sexual assault and their loved ones. The information shared with these providers will not be disclosed to others without consent. Contact information for these resources is below.

A report of unlawful discrimination, unlawful harassment, or sexual assault may be reported by completing the [online Unlawful Sexual Misconduct Report Form](#), in-person, by mail, by telephone, by electronic mail. The Title IX Coordinator must be contacted promptly by a Report Recipient. Emergency notifications about unlawful sexual misconduct may be reported to Campus Safety anytime by contacting (805) 565-6222 or the Resident Director On Call at (805) 565-6273.

THE COLLEGE'S DUTY TO INVESTIGATE AND TAKE CORRECTIVE ACTION

The college has responsibility to respond promptly and supportively when the college knows (actual knowledge), or reasonably should know (constructive notice) about possible instances of sexual harassment within an education program or activity of the college or outside of an education program or activity, whether on-campus or off-campus, if the incident could contribute to a hostile educational environment or interfere with a student's access to education. Requests of the complainant to withhold her/his identity or to not initiate a conduct process will be considered in light of the college's responsibility to provide a safe and non-discriminatory environment for all students and employees. Whether the matter will be handled under this Unlawful Sexual Misconduct Policies and Procedures or under the [Bias, Harassment and Discrimination Policies and Procedures](#) will depend on the specific facts of each case.

REPORT RECIPIENTS ⁶

If a member of the Westmont community has a concern or has become aware of an instance of unlawful sexual misconduct involving a student, faculty member or staff member, applicants for admission or employment, visitors, volunteers, vendors, consultants, third parties, or any person that provides services to the college, sharing information about nonconsensual unlawful sexual misconduct covered under this policy with any of the following Report Recipients⁷ is considered reporting it to the college and will initiate the college's response and resolution process under this policy:

- Resident Directors
- Resident Assistants
- Student Life Deans
- Student Life Directors and Coordinators
- Faculty department chairs

⁶ CA SB 493 refers to these employees as "Responsible Employees"

⁷ If the accused is the Title IX Coordinator, the Provost and Dean of Faculty, or the Vice President for Student Life, 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.

- Assistant Vice President and Associate Director of Human Resources
- Athletic Director, Associate Athletic Director, Assistant Athletic Director, Coaches
- Faculty, adjunct faculty, instructors or lecturers
- Laboratory directors, coordinators, or principal investigators
- Internship or externship directors or coordinators
- College employee supervisors
- Directors of Off Campus Programs
- Director of Institutional Resilience (Title IX Deputy)
- Title IX Coordinator
- Vice Presidents
- Provost and Dean of the Faculty
- President

A report of unlawful discrimination, unlawful harassment, or sexual assault may be reported in-person, by mail, by telephone, by electronic mail or by the [online Unlawful Sexual Misconduct Report Form](#). The Title IX Coordinator must be contacted promptly by a Report Recipient. Emergency notifications about unlawful sexual misconduct may be reported to Campus Safety anytime by contacting (805) 565-6222 or the Resident Director On Call at (805) 565-6273.

WITNESS TRUTHFULNESS

One of the core values of the Westmont community is integrity and truth telling. As such, all individuals participating in unlawful sexual misconduct proceedings are expected to tell the full and complete truth throughout the process.

When instances of unlawful sexual misconduct have been reported, the college's concern is focused solely on learning all that is possible about what happened. In order to have a full and thorough investigation, it is important that all facts are shared with the investigators, even if some of those facts involve disclosing violations of the college's standards for student conduct or other campus policies. Complainants, respondents, and witnesses will not be disciplined in any manner, during or after the investigation, for reporting facts about the events that include violations of the college's standards for student conduct or other campus policies, unless the college determines that the violation was egregious, or amounts to an action that places the health or safety of any other person at risk. The college's sole focus is learning everything possible about what happened during the incident so that a finding and resolutions regarding the unlawful sexual misconduct can be reached.

NO RETALIATION

Neither the college nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing.

RESOURCES

COUNSELING AND SUPPORT

Whether or not a complainant decides to submit a report to the college for investigation under this policy, the college is committed to providing a safe place for education and to working through the range of emotions and questions that can arise in the event of an incident covered under this policy. The college encourages individuals to take advantage of personal avenues of emotional support as well as one or more of the following resources:

CAMPUS RESOURCES FOR STUDENTS

- Counseling and Psychological Services (CAPS), 805-565-6003, Information and resource referral, Lower Campus
- Campus Pastor's Office, 805-565-6170, Pastoral support and counseling, Clark B
- Health Center, 805-565-6164, Medical and information resource, Lower Campus
- *Vice President for Student Life, 805-565-6028, Information about the student conduct process and list of advisers, Kerrwood Hall, Second Floor
- *Dean of Students, 805-565-6028, Information about the student conduct process and list of advisers, Kerrwood Hall, Second Floor
- *Resident Director on Call, 805-565-6273, Emergency Response, information and referral resource
- *Provost's Office, 805-565-6007
- *Director of Institutional Resilience/Title IX deputy 805-565-6633
- *Campus Safety Department, 805-565-6222, Emergency response

CAMPUS RESOURCES FOR EMPLOYEES

- Campus Pastor's Office, 805-565-6170, Pastoral support and counseling, Clark B
- Human Resources (805) 565-6882
- *Vice President for Student Life, 805-565-6028, Information about the student conduct process and list of advisers, Kerrwood Hall, Second Floor
- *Provost's Office (805) 565-6007
- *Director of Institutional Resilience/Title IX deputy (805) 565-6633
- *Campus Safety Department, 805-565-6222, Emergency response

*Note: a campus resource with an asterisk appearing next to it indicates that the individual in the position has a duty to report the incident for investigation by the college under this policy and/or, in certain circumstances, to law enforcement officials.

COMMUNITY RESOURCES

- Standing Together to End Sexual Assault (STESA) Hotline, 805-564-3696, 24-Hour Hotline
- Standing Together to End Sexual Assault (STESA), 805- 963-6832, 433 E. Canon Perdido Street, sbstesa.org

- Cottage Hospital Trauma Center, 805-569-7451, Pueblo at Bath Street, Medical assistance and evidence collection

REQUESTS FOR REASONABLE ACCOMMODATIONS

Individuals who need a reasonable accommodation in the process because of a disability should contact the Title IX Coordinator who will work with the Director of the Office of Disability Services. The College will consider requests for reasonable accommodations on a case-by-case basis. Accommodations the college may provide include:

- Providing reasonable accommodations as required by law to an individual with a disability who requests an accommodation necessary to participate in the complaint resolution process.
- Providing an interpreter for individuals who are limited English-language proficient.

CONFLICTS OF INTEREST

Investigators and adjudicators should avoid conflicts of interest and recuse themselves from proceedings when their participation jeopardizes the impartiality of the process. Both the complainant and respondent may raise issues of concern about the impartiality of an investigator or adjudicator for a particular case. If a potential conflict of interest is identified, the Hearing Panel Chair will notify the Title IX Coordinator of the potential conflict. The Title IX Coordinator in consultation with the Hearing Panel Chair will make the decision as to whether recusal is appropriate, and will replace anyone whom he/she determines is unable to serve. If the potential conflict involves the chair, then the Title IX Coordinator will make the determination.

CONFIDENTIALITY AND PRIVACY

Every reasonable and appropriate effort will be taken by the college to protect the privacy of all individuals involved in sexual misconduct proceedings. The college will, to the extent possible, maintain confidentiality regarding the details and content of the unlawful sexual misconduct process including, but not limited to, the investigation, Hearing Panel meeting and appeal process. The college will disclose information about this process only when it is necessary for the investigation and resolution of a report made under this policy, to meet an otherwise legitimate educational interest, or to fulfill a legal obligation.

Under the Clery Act, the college must disclose statistics of incidents covered under this policy in its Annual Security Reports (ASRs). When the college receives information about an allegation presenting a serious or ongoing threat to the safety of the community, a timely warning may be issued. The college will not disclose the identity of the complainant without her/his consent nor otherwise violate privacy rights afforded to individuals under the Clery Act or Family Educational Rights and Privacy Acts (FERPA) or other regulations governing privacy rights, except as permitted under the relevant laws.

RIGHTS OF THE PARTIES

Both complainants and respondents have the right—

- To receive written notice that the college is conducting an investigation of the incident alleged to be in violation of this policy, including the identity of the complainant(s) and respondent(s), the specific section of this policy allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident.
- To receive a copy of this policy explaining the policies and procedures used to resolve complaints of prohibited conduct as it is described in this policy.
- To request class, work or residence hall adjustments during the investigation and decision-making process.
- To receive information about reasonably prompt timeframes for the major stages of the investigation and live hearing process.
- To receive timely notice of all meetings in these proceedings in which either or both parties will be present.
- To discuss the allegations or gather and present relevant evidence with appropriate restrictions as determined by applicable laws, including presentation of expert witnesses.
- To have an advisor present during any stage of the investigation and adjudication proceedings. This may include having legal counsel present. In no case may an advisor or legal counsel speak or take an advocacy role during an investigation or hearing, other than cross-examining witnesses.
- To have the opportunity to give information, identify witnesses, and provide documentary information during the course of the proceedings.
- To have timely and equal access to all information that will be used during any informal or formal proceedings.
- To not have their irrelevant sexual history (prior or subsequent) discussed or considered during the proceedings.⁸

⁸ CA SB 493 amends CA Education Code 66281.8 to read (I) The investigator or hearing office shall not consider the past sexual history of a complainant or respondent except in the limited circumstances permitted by this clause.

(II) 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.

(III) (ia) 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.

(ib) 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 sub-subclause (ia), 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.

- To not provide incriminating evidence.
- To confront opposing information that is relevant and material (see section below entitled “The Right to Confront Opposing Information) and cross examine the other party or witnesses in a live hearing panel setting.
- To receive simultaneous, written notification of the outcome, including any sanctions imposed.
- To receive written justification for any no contact directive and explanation of the terms of the directive including the circumstances, if any, which could violate the terms and be subject to disciplinary action.
- To appeal the outcome of the proceedings.
- To receive written notice of any appeal and notice of any modification made to the outcome during or after an appeal.
- To have appropriate conduct outcomes, remedial measures, and systemic remedies put in place following a final finding of responsibility.
- To confidentiality to the extent possible. (Any individual serving as an advisor 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 proceedings, and the privacy of the complainant, respondent and any witnesses. The college will remove any advisor or legal adviser who fails to adhere to any of the expectations outlined for them in this policy.)

THE RIGHT TO CONFRONT OPPOSING INFORMATION

The right to confront opposing information allows the complainant and the respondent:

- To view one another’s written statements submitted to the investigator.
- To view documents or material discovered or developed by the investigator during the course of the investigation.
- To have their advisors question and cross examine the other party and witnesses in a live hearing setting as part of the Hearing Panel proceedings. Parties may be asked to submit questions to be asked of any party or witness in advance of the hearing. The Hearing Panel Chair, in its sole discretion, determines whether the questions to the parties present are relevant and appropriate to ask. Parties are not allowed to directly cross examine each other or witnesses at or outside of a Hearing Panel proceeding.

ADVISORS

The complainant and respondent are entitled to the same opportunities to have others present during a college complaint proceeding, including the opportunity to be accompanied to any related meeting or

(IV) Before allowing the consideration of any evidence proffered pursuant to this subdivision, the investigator or hearing officer shall provide a written explanation to the parties as to why consideration of the evidence is consistent with this clause.

proceeding by an advisor of their choice. Any advisor that accompanies the complainant or respondent to a meeting must sign an Advisor Agreement which stipulates the role of the advisor.

ADVISOR'S ROLE

The advisor has two primary roles: (1) support the complainant or respondent in the process, and (2) ask the cross examination questions in the Live Hearing Panel proceedings. Each of these roles is described in this section.

First, the advisor is to support the complainant or respondent as she or he prepares to participate in proceedings under this policy, and to provide a supportive presence in any meetings the complainant or respondent attends. An advisor may assist in reviewing and confirming their understanding of procedures; or reminding the complainant or respondent of available resources referred to in this policy or by any college official administering this policy. The advisor chosen may be present at any time but is not an advocate for the complainant or respondent.

Second, during the live portion of the Hearing Panel, the advisor may ask relevant cross-examination questions of a party or witness. The complainant's or respondent's chosen advisor may be his or her legal counsel. The role of an advisor is to ask cross examination questions and follow up questions on behalf of the complainant or respondent. The advisor does not represent the party. Only relevant questions will be allowed and questioning may not be conducted in an intimidating, aggressive, repetitive, irrelevant or harassing manner. In no case may an advisor, even if the person is legal counsel, take on an advocacy role during any portion of the investigation and panel process. The Hearing Panel chair will remove or dismiss advisors who become disruptive or who do not abide by these limitations on their participation.

CHOOSING AN ADVISOR

Complainants and respondents are strongly encouraged but not required to choose an advisor to support them during any meetings conducted under this policy. Many choose a faculty or staff member. While complainants and respondents are not restricted in their choice of an advisor, they are encouraged to choose an individual they believe understands the scope of the advisor's role and who will respect privacy and the confidential nature of information disclosed during the proceedings. If the complainant or respondent does not choose an advisor, the college will provide an advisor for the individual and will have an advisor on standby in the event that one of the advisors does not appear at the appointed time. The advisor may be present with a complainant or respondent during any meeting he or she attends. For students, meetings are scheduled so as not to conflict with the student's regular academic schedule. While reasonable requests to reschedule meetings due to a conflict with the advisor's schedule will be considered, advisors are expected to make adjustments to accommodate the student's scheduled meeting.

INVESTIGATION OVERVIEW

The college shall train all deputies, investigators and adjudicators appointed by the Title IX Coordinator to assist the college in responding to informal and formal complaints of unlawful sexual misconduct. Although the

specific representatives assigned to resolve a particular complaint may vary, available staff and faculty representatives will include both female and male representatives as well as people of color. The Title IX Coordinator shall regularly review all currently trained and appointed deputies, investigators and adjudicators to ensure their training is current. Throughout the investigative process, the presumption shall be made that the respondent is not responsible for the alleged conduct until a determination is made.

The college will provide a prompt, fair, unbiased, trauma-informed and impartial investigation and resolution. Upon receipt of a report, whether oral or written, of an alleged violation of this policy, the Title IX Coordinator will determine the process for review and resolution (including the policy under which the report will be addressed). The investigation and adjudication is not an adversarial process between the complainant, the respondent and the witnesses, but rather a process for the college to comply with its obligations under existing law. The college prohibits mandated mediation and restricts the use of mediation, even voluntary mediation, for the resolution of allegations of sexual violence (i.e., sexual assault, dating violence, domestic violence, and stalking). The college also prohibits the requirement that a complainant agree to a voluntary resolution agreement or any form of resolution as a means to receive remedies or other interim measures.

For incidents of alleged occurrence of unlawful sexual misconduct between students or when the responding party is a student, the Title IX Coordinator will work with the Dean of Students to ensure resolution. For incidents between employees (e.g., faculty and staff), when the responding party is an employee and all other incidents, the Title IX Coordinator will work with the Title IX deputy to ensure resolution. For the purposes described in this policy, the “Dean of Students” and “Title IX Deputy” includes his or her designee. In both sets of proceedings, the burden of proof and gathering evidence is on the college, not the parties.

For proceedings, sanctions and appeals related to student allegations or when the responding party is a student, refer to Appendix A.

For proceedings, sanctions and appeals between non-student employees (staff members or faculty member) or when a non-student employee (staff member or faculty member) is the respondent, refer to Appendix B.

For proceedings, sanctions and appeals involving non-community members (e.g., applicants for admission or employment, visitors, volunteers, vendors, consultants, third parties, or any person that provides services to the college) the Title IX Coordinator, President, Provost and Dean of Faculty and Vice President for Student Life will determine the appropriate investigation process, whether a policy violation has occurred, and any appropriate corrective action aimed at prevent any ongoing or subsequent policy violation.

INSTITUTIONALLY DIRECTED PROCEDURE

Regardless of whether a complaint has been received, the college may, at any time and at its sole discretion, initiate an investigation of or take action against any unlawful sexual misconduct occurring within the Westmont community. In the event that the complainant does not wish to pursue the complaint process, any response by the college may be hindered by a complainant's wishes for anonymity and/or inaction. In a case of sexual violence where a criminal investigation has been commenced by law enforcement authorities, the procedures outlined in this policy and stated timelines may be adjusted as reasonably required to avoid interference with the criminal justice process.

EXTERNAL COMPLAINT OPTIONS

Westmont encourages all members of the community to report any incidents of sexual misconduct 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 sexually harassed/assaulted or retaliated against for resisting or complaining about sexual misconduct, 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 Housing⁹ 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.

RELATED POLICIES AND PROCEDURES

[Notice of Non-Discrimination](#)

[Bias, Harassment and Discrimination Policies and Procedures](#)

Updated: August 5, 2022

⁹ 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.

PROCEEDINGS, SANCTIONS AND APPEALS RELATED TO STUDENTS (APPENDIX A)

The following proceedings, sanctions and appeals pertain to allegations between students or when the respondent is a student.

STUDENT CONDUCT PROCESS

The following student conduct process applies to allegations of prohibited conduct described in this policy. For all other alleged violations of the Community Life Statement or other college policy, refer to the college's general student conduct process. The college will attempt to resolve complaints made under this policy no more than sixty (60) calendar days after a report is received. However, in some cases, (e.g., complex facts; large number of witnesses; official break in the academic calendar, etc.), the process may take longer.

Pre-Investigation Review

Upon receipt of a report, whether oral or written, of an alleged violation of this policy, the Title IX Coordinator will assign the Dean of Students (which, for all purposes described in this policy, includes his or her designee) to conduct a pre-investigation review of the information received. As part of the pre-investigation review, the Dean of Students will conduct separate meetings with the reporting party (or parties) and respondent. During this meeting, the Dean of Students will provide a copy of this policy, explain the process used to resolve complaints and answer any questions about the process, and explore possible supportive measures that may need to be taken.

The Dean of Students will also explain to the reporting party the process for submitting a signed formal complaint. A formal complaint may be written and signed by the complainant or the Dean of Students may draft the formal complaint based on the interview with the complainant. In the latter process, the complainant will review the complaint as drafted by the Dean of Students, sign it and submit it as a formal complaint.

Neither the complainant or respondent will be required to provide substantive information about the alleged misconduct during their pre-investigative meetings. However, the college is required to notify both parties if it opens an investigation. Such notification includes: identity of the parties, the specific section of this policy allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident. Therefore, if this information is not contained in the report made to the college, the Dean of Students may ask the reporting party/complainant some questions about the alleged incident, but only for the purpose of obtaining the minimal information required to determine if an investigation is warranted.

Supportive Measures

The Dean of Students will make determinations regarding the implementation of appropriate supportive measures. The purpose of supportive measures is, to the extent possible, to ensure the safety of all persons involved, reduce concerns for personal physical and emotional safety and overall prevent creation of a hostile environment for the individuals and the community. Supportive measures are designed to restore or preserve equal access to the education program or activity, without unreasonably burdening the other party. Supportive

measures may include, but are not limited to: no contact advisories; residence hall relocations; restrictions to campus housing or other campus locations and activities; alternative class assignments or classrooms; and/or interim suspension.

At any time, the complainant or respondent may request a supportive measure by contacting the Dean of Students. At the request of the complainant, the college will provide a complainant who transfers to another postsecondary institution with information about resources for victims of sexual assault at the institution to which the complainant is transferring.

The college will make information available to complainants on the right to seek orders for protection, no contact orders, or restraining orders.

Emergency Removal (Interim Suspension)

Prior to the Interim Suspension of an individual from campus due to safety risk, the following criteria shall be met:

- An individualized safety and risk analysis to determine whether an immediate threat to the physical health or safety of a student or other individual arising from the allegations of sexual misconduct justifies removal,
- The individual being removed shall receive written notice of the Emergency Removal, and
- An opportunity to challenge the decision is provided to the individual being removed from campus.

Notice of Allegations and Initiation of Investigation

If the Dean of Students receives a formal complaint and initiates an investigation, the parties will receive a written notice of allegations. The notice of allegations will include:

- notice of allegations, including sufficient details known at the time and with sufficient time to prepare a response before the initial interview.
- identity of the parties.
- the specific section of this policy allegedly violated.
- the precise conduct allegedly constituting the potential violation.
- the date and location of the alleged incident.
- indication that the respondent is presumed not responsible and that determination of responsibility is made at the conclusion of the resolution process.
- a statement about a right to an advisor of choice who may be but is not required to be an attorney.
- notice of the resolution process, including any informal resolution process.
- a statement that parties may inspect and review evidence.
- a statement informing parties that knowingly making false statements or knowingly submitting false information is prohibited.

If additional allegations about the complainant or respondent arise during the resolution process, notice will be provided to the complainant and respondent.

The Dean of Students will assign an investigator to schedule separate investigative meetings for the parties. In anticipation of the interviews, the investigator will ask the parties to submit written statements to be reviewed by the investigator prior to the interview. The complainant may elect to have the information they provided in their written complaint to serve as their written statement on the allegation. The parties may also identify a list of any witnesses with information pertinent to the alleged conduct. After conducting interviews with both parties, the investigator will do one of the following:

- determine that there is not enough information to warrant further investigation and will inform the Dean of Students;
- offer informal resolution to the parties;
- proceed with full investigation if informal resolution is not an option.

INFORMAL RESOLUTION PROCEEDINGS

Informal resolution may be offered at any time in the process after a formal complaint has been filed and prior to determination. The parties may voluntarily agree to forego a full investigation and any subsequent Student Life conduct proceedings and instead participate in an informal process to reach a mutually acceptable resolution. Parties are never required to participate in an informal resolution process; however, their voluntary written consent is required to pursue an informal resolution process.

The college will not condition enrollment/continuing enrollment, employment/continuing employment or enjoyment of any other right on a party's waiver of the right to an investigation and adjudication of formal complaint. Informal resolution may not be offered or facilitated in cases alleging an employee sexually harassed a student.

In an informal resolution, both parties will receive written notice disclosing

- the allegations;
- the requirements of the informal resolution process including circumstances when it precludes the parties from resuming a formal complaint for the same allegation provided, however at any time prior to agreeing to a resolution, any part has the right to withdraw from the informal resolution process and resume the resolution process with respect to the formal complaint;
- the consequences resulting from participating in the informal resolution, including records that are maintained and could be shared.

The investigator will facilitate the informal resolution process.

FORMAL RESOLUTION PROCEEDINGS

When the informal resolution procedures are not possible or appropriate, or fail to satisfactorily resolve the concern, the investigator will complete a full investigation and determine whether or not there is sufficient information to forward the matter to the Hearing Panel for resolution.

Review and Respond

After completing the investigation but prior to finalizing the investigation report, the complainant and the respondent will have equal opportunity to inspect and review any evidence obtained that is directly related to the allegations and a draft of the investigation report. This includes evidence upon which the college does not intend to rely in reaching a determination, including evidence obtained from a party or other source. The investigative report will include a summary of interviews conducted of each party as well as relevant evidence. Each party will be permitted to review it for accuracy and completeness and respond in writing to alert the investigator if she/he believes any modification in the summary is needed. Parties will receive evidence in hard copy or electronic format and will be given at least ten (10) calendar days to submit a written response, which may be provided for the other party's review. Then, the investigator will finalize a written investigation report that fairly summarizes relevant evidence and send it to the parties in electronic or hard copy form at least ten (10) calendar days prior to the hearing panel meeting. The investigator may amend the investigation report based on written responses and submit it to the Dean of Students who serves as the chair of the Hearing Panel.

Hearing Panel

The Hearing Panel is composed of a minimum of three student life staff or faculty who have been trained to adjudicate and resolve allegations made under this policy. The Dean of Students serves as the chair of the Hearing Panel. The chair's role is to facilitate the Hearing Panel and ensure compliance with the process and procedures outlined below.

Before the Hearing Panel

Submission of Documentary Information

Prior to any Hearing Panel meeting, the complainant and respondent may offer documentary information in support or defense of the complaint, including any questions that they would like asked of the other party or witnesses during the conduct proceedings. The Hearing Panel Chair will inform the complainant and respondent of the deadline for the submission of such information. Information submitted after the deadline will generally not be accepted unless prior permission from the Chair is received. The Hearing Panel Chair will review all information submitted and return all that is not relevant or material to the complaint or that is submitted after the deadline when no exception to timely submission is warranted. It is within the sole discretion of the Chair to determine what information is relevant and appropriate and whether extenuating circumstances warrant an exception to the deadline given to the parties for the submission of the information described here.

Inspection and Review of Documentary Information

The Dean of Students (Hearing Panel Chair) will assemble for the complainant, respondent and Hearing Panel's review, all documentary information related to the allegations. Documentary information will generally consist of, but is not limited to:

- A statement of the specific allegations to be resolved by the Hearing Panel;
- A written summary of the investigation conducted;
- All relevant and material statements and documents collected by the investigator;

- All relevant and material statements and documents submitted by the complainant and respondent.

Notification of Hearing Panel

Within seven days of the Hearing Panel's review of documentary information, the Dean of Students will notify the complainant and the respondent of the time and date of its first witness meeting. Generally, the complainant and respondent will receive seventy-two (72) hours advance notice of the scheduled meeting time for their respective meetings with the Hearing Panel. While participation in the Hearing Panel process is voluntary, students are expected to participate in the student conduct process upon request. Should a party or witness choose not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in the questioning, then the adjudicator(s) may not rely on any prior statement made by that party or witness (including those contained in the investigation report or made at the hearing) in the ultimate determination of responsibility. Meetings with the Hearing Panel will be scheduled taking into consideration students' regular academic schedules only. Student Life is committed to prompt resolution of all student conduct meetings. However, the Dean of Students in his or her sole discretion may extend or modify the above-referenced timeframes.

Hearing Panel

Hearing Panel meetings are private with the exception of individuals named in the "Live Hearing" section below who may attend that portion of the panel proceedings. Once convened by the Chair, the Hearing Panel may conduct several meetings as part of its proceedings under this policy. Generally, these meetings fall into three categories: meetings to prepare for the "live hearing" meetings, the "live hearing" meetings in which the panel meets individually with the parties and any relevant witnesses, and deliberation meetings. In addition to its meetings with the complainant and respondent, the Hearing Panel may meet with all, some or none of the witnesses identified in the documentary information it receives.

Live Hearing

The live hearing portion of the Hearing Panel proceedings may be conducted with all parties physically present in the same geographic location or at the college's discretion, any or all parties, witnesses and other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the college will provide for the live hearing portion of the Hearing Panel proceedings to occur with the parties located in separate rooms with technology enabling the Hearing Panel and the parties to simultaneously see and hear the party or witness answering questions. At no time may the complainant or respondent directly address each other or a witness before the panel, and the complainant and respondent may only address the panel during the portion of the proceedings in which they are meeting with the panel.

The complainant and the respondent will be able to question and cross examine one another or any other witnesses (if applicable) through their advisor in the live hearing portion of the Hearing Panel proceedings. Student parties shall have the opportunity to submit written questions to the hearing officer in advance of the hearing. At the hearing, the party being asked questions will have an opportunity to object, in written form only, to the questions posed. Neither the hearing officer nor the college must respond to objections, other than

to include any objection in the record. The hearing officer has the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. Both parties are restricted from introducing evidence, including witness testimony, at the hearing that was available but not identified during the investigation. However, the hearing officer has discretion to accept for good cause, or exclude, the new evidence offered at the hearing.

The Hearing Panel cannot draw any 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.

The college will create an audio or audiovisual recording or transcript of any live hearing held and make it available to the parties for inspection and review.

As a general rule, the Hearing Panel will meet with the following individuals over the course of one or more days in the following order:

1. The complainant
2. The respondent
3. Any witnesses requested by the Hearing Panel

Each of these will meet individually with the Hearing Panel when called by the panel. Prior to the Hearing Panel deliberations, the Chair will give members of the panel the opportunity to ask follow up questions of the complainant, the respondent and any witnesses previously met. The Chair will also give the complainant and respondent the opportunity to request follow-up questions of any previous witness (including the other party). Therefore, all participants should remain available for recall prior to the Hearing Panel's deliberations.

Deliberation

At the conclusion of its meetings, the Hearing Panel will deliberate in private, and, weighing all of the available information, the Hearing Panel will determine whether it is more likely than not that a violation of policy occurred. This level of proof, which is the legal standard in California for these proceedings, is commonly referred to as a "preponderance of the evidence." This level is a lesser level than that used in the criminal justice system, which requires that a case be established "beyond a reasonable doubt." The Hearing Panel will determine one of the following appropriate findings by majority vote:

1. It is more likely than not that the alleged violation occurred, and the respondent is responsible; the Hearing Panel will impose sanctions, as appropriate; or
2. It is more likely than not that the alleged violation did not occur and the respondent is not responsible;
or
3. There is not sufficient information available to make a determination.

Note: In the event of a finding of (2) or (3) is reached by the Hearing Panel, the finding is not necessarily based on the accuracy of the charges but rather on the strength of the information available.

OUTCOME

The chair of the Hearing Panel will communicate the outcome of the Hearing Panel to the respondent and the complainant in writing generally within seven (7) business days. Unavoidable delays in providing notice of the result may include absence of the parties, concurrent law enforcement activity or the need for language assistance or accommodations of disability, and shall not constitute an appealable procedural error. Results will be delivered simultaneously to all parties and include:

- the name of the complainant and respondent;
- the allegations potentially constituting unlawful sexual discrimination, sexual harassment, sexual assault, stalking, dating or domestic violence;
- the procedural steps taken since the complaint;
- the findings of fact;
- the conclusion regarding application of the policy to the facts;
- a statement of and rationale for the result of each allegation:
 - determination of responsibility;
 - sanctions imposed on the respondent;
 - whether remedies will be provided to the complainant;
- appeal information; and
- the date the results become final, which is the date the parties receive the written determination of the appeal or the date on which an appeal would no longer be timely.

Disclosure of the result in this manner does not violate the Family Educational Rights and Privacy Act (FERPA) and is consistent with the college's obligations under the Clery Act.

SANCTIONS

Students found responsible for any violation under this policy are subject to the following sanctions:

Active Sanctions: Because our goal is to make the student conduct process a redemptive and learning experience, students are often required to complete an assignment that is designed to offer opportunities to develop new knowledge or skills, reflect on their experiences, and contribute to the community in some way. Some examples of these opportunities are written reflection papers, community service, mentoring, educational programs, and counseling.

Sanctions may also include, but are not limited to, one or more of the following:

- **Formal apology.** A written and/or verbal apology to the offended party/parties.
- **Restitution.** Compensation for loss, damages or injury. This may take the form of completing appropriate service and/or monetary or material replacement.
- **Parental Notification.** Parental notification may occur if a student is claimed as a dependent and is either found responsible for sexual assault, placed on deferred suspension, suspended or expelled.
- **Loss of privileges.** Denial of specified privileges for a designated period of time. Loss of privileges includes, but is not limited to, open hours, vehicle permit, living in residence halls or off-campus, entering the dining commons, and attending or participating in college programs or activities (such as

athletic events, intramurals, music performances, drama productions, intercollegiate athletics, graduation exercises, student leadership positions, club activities, off-campus study programs, summer travel programs, etc.).

- **Student Life probation.** A period of review during which the student must demonstrate the ability to comply with the Community Life Statement and other college policies or requirements. Probation status takes away the privilege of holding certain student leadership positions. Probation may, but does not always, restrict a student's ability to participate in activities such as study abroad programs, or other activities in which the student is representing the college. Students are typically placed on Student Life probation for 15 or 30 weeks of the academic calendar. Violations that occur during the probation period may lead to further restrictions such as, but not limited to, extension of the probationary period, deferred suspension, suspension, or expulsion from the college.
- **Deferred suspension.** Deferred suspension is a period of review during which the student must demonstrate an ability to comply with the Community Life Statement and other college policies or requirements. If, during the period of deferred suspension, the student is found responsible for a similar or more serious violation, the student will be suspended from the college (the suspension may be imposed immediately with the loss of the current semester). Deferred suspension status takes away the privilege of holding certain student leadership positions. Deferred suspension may, but does not always, restrict a student's ability to participate in activities such as study abroad programs, or other programs in which the student is representing the college. Students are placed on deferred suspension for 15 or 30 weeks of the academic calendar. If, during the period of the deferred suspension, a student is found responsible for a Level I violation, the period of the deferred suspension for the student will be extended. (For a list of violation levels and associated sanctions see the Student Conduct Process section on Sanctions)
- **College suspension.** Separation of the student from the campus for a specified period of time, after which the student is eligible to return. While suspended, students may not be on campus or participate in any college related event. Length of suspensions may vary from one or more days to one or more semesters. The timing of the suspension will not occur at the convenience of the student. The Academic Policies and Procedures state, "Faculty are not permitted to provide make-up opportunities or alter established class schedules for suspended students. Where this creates a hardship for students, they are to be referred to the Dean of Students." Conditions for the student's return to campus may be specified. If a student is suspended for the remainder of a semester or the entire semester, they must reapply for admission to the college.
- **College expulsion.** Permanent separation of the student from the college.

Other Remedial Efforts

In addition to the imposition of sanctions, the college may develop and/or distribute additional education and training for students and other members of the college community on prevention and awareness of sexual assault, stalking, dating and domestic violence; provide increased supervision, monitoring and/or campus safety presence in locations where violations under this policy are found to have occurred; revise and publicize procedures; or conduct climate surveys.

APPEALS

This process applies to an appeal of sanctions received from a violation of this policy only. For appeal of sanctions received from a violation of other college policies, refer to the Appeals section of the Student Conduct Process.

Both the complainant and the respondent may seek review of a decision made under this policy by making an appeal. Appeals must be submitted to the Title IX Coordinator in writing via email to eschulze@westmont.edu within three (3) business days of the decision. Appeals will be forwarded to and reviewed by the Appeal Officer(s). Any requests for extension must be made in writing to the Title IX Coordinator within the original three-day appeal time period. Extensions for appeals are rarely granted, and will only be granted in extremely unusual circumstances. The decision to grant or deny an extension is within the sole discretion of the Title IX Coordinator.

Only one request for an appeal per individual involved as complainant or respondent may be submitted. Appeals should be written by the complainant or respondent themselves and not a third party.

Appeal Criteria

An appeal must be in writing and consist of:

- A completed Appeal Request form (available in the Student Life office), and
- A statement outlining and supporting the specific grounds on which the student is appealing.

The appeal is not a rehearing of the original case and the role of the Appeal Officer(s) is not to substitute his or her own judgment for the judgment of the Hearing Panel. The role of the Appeal Officer(s) is to determine whether a new decision should be considered due to a procedural error, the availability of new information, or conflict of interest or bias. Therefore, an appeal must be based on one or more of the following grounds:

- A process or procedural error was made that was significantly prejudicial to the result of the student conduct meeting as it affects the student appealing.
- New information that was not available or known to the student appealing at the time of the student conduct meeting has arisen which, when considered, may materially alter the result. Note: Information that the appealing student chose not to present at the time of the hearing is not considered new information.
- The sanctions imposed are so severe — considering the nature of the violation, student attitude, previous conduct history, impact of the student's behavior on the community and other specific circumstances — that they demonstrate an abuse of discretion by the student conduct officer or Student Conduct Panel. (Note: a complainant reporting party may use the same grounds to appeal that sanctions imposed are not severe enough.)
- The Title IX Coordinator, investigator or Hearing Panel Member had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that significantly affected the outcome of the matter.

It is not enough to simply assert one of the grounds for appeal. The written statement accompanying the appeal form must provide information that supports grounds upon which the appealing party bases the appeal.

For example: If a complainant asserts that a procedural error occurred, he or she must name the procedure with specificity and explain how the error was significantly prejudicial to the decision made. If an appeal does not contain sufficient information to support the grounds upon which the appealing party bases the appeal, review of the appeal will be denied.

During the appeal process, the Title IX Coordinator may choose to set aside sanctions as appropriate. If the Title IX Coordinator decides to set aside any sanctions during the appeal process, the Title IX Coordinator will inform both the complainant and the respondent.

Preliminary Review of Appeal

The Appeal Officer(s) will grant or deny review of decisions rendered by a Hearing Panel based on the student's written appeal. The decision to grant or deny review of the original decision will be made within three business days following the deadline to have submitted an appeal.

1. *Review Denied:* The Appeal Officer(s) determines that a review of the original decision will not be conducted because the appeal fails to meet the criteria outlined above. In such cases, the Appeal Officer and the Title IX Coordinator will make no inquiry beyond the written material submitted and the original decision and any sanctions imposed will stand.
2. *Review Granted:* If the student's written appeal satisfies the appeal criteria, the Appeal Officer(s) will grant a review of the original decision.

If the Appeal Officer(s) grants a review of the appeal, the Appeal Officer(s) will communicate to the non-appealing party this decision and provide the non-appealing party an opportunity to view a copy of the appeal. Within three business days of such notification, the non-appealing party may submit a written statement to the Appeal Officer that he/she wishes to be considered during the appeal process.

Appeal Review

As part of the appeal review process, the Appeal Officer(s) will consider material and/or testimony previously presented or a written summary of the previous Hearing Panel meeting. The Appeal Officer(s) may, but is not required to, meet with the complainant, respondent, any witnesses and/or members of the Hearing Panel (if reviewed by an Appeal Officer) prior to making a decision regarding the appeal. The nonappealing party shall have an opportunity to respond to the appeal.

Appeal Decision

Following a prompt and effective review, the Appeal Officer(s) will communicate a decision on the appeal no later than ten (10) business days following the decision to grant a review of the original decision. The decision describing the result of the appeal and rationale will be simultaneously communicated in writing to both the appealing and non-appealing party. The decision will be in one of the two following forms:

- **Original Decision Upheld:** Where review of the original decision does not demonstrate a different decision is warranted, the original decision will be upheld.

- Original Decision Modified: Where review of the original decision demonstrates support for the appeal and a different decision is warranted, the Appeal Officer(s) will modify the original decision. This decision may include sanctions being decreased, modified, or revoked. Only in instances when the complainant appeals the decision may sanctions be increased.

The decision on the appeal is final, and no other office will accept or review appeals following the decision.

PROCEEDINGS, SANCTIONS AND APPEALS RELATED TO FACULTY AND STAFF (APPENDIX B)

The following proceedings, sanctions and appeals pertain to allegations between non-student employees (faculty and staff) or when the respondent is a non-student employee (faculty or staff). The college will attempt to resolve complaints made under this policy no more than sixty (60) calendar days after a report is received. However, in some cases, (e.g., complex facts; large number of witnesses; official break in the academic calendar, etc.), the process may take longer.

FACULTY AND STAFF SEXUAL MISCONDUCT PROCEEDINGS

The following process applies to allegations of prohibited conduct described in this policy. For all other alleged violations of the Community Life Statement or other college policy, refer to the staff or faculty process in the relevant handbook. The college will attempt to resolve complaints made under this policy no more than sixty (60) calendar days after a report is received. However, in some cases, (e.g., complex facts; large number of witnesses; official break in the academic calendar, etc.), the process may take longer.

Pre-Investigation Review

Upon receipt of a report, whether oral or written, of an alleged violation of this policy, the Title IX Coordinator (which, for all purposes described in this policy, includes his or her designee) will conduct a pre-investigation review of the information received. During the pre-investigation review, the Title IX Coordinator will conduct separate meetings with the reporting party (or parties) and responding party. During this meeting, the Title IX Coordinator will provide a copy of this policy, explain the process used to resolve complaints and answer any questions about the process, and explore possible supportive measures that may need to be taken.

The Title IX Coordinator will also explain to the reporting party the process for submitting a signed formal complaint. A formal complaint may be written and signed by the complainant or the Title IX Coordinator may draft the formal complaint based on the interview with the complainant. In the latter process, the complainant will review the complaint as drafted by the Title IX Coordinator, sign it and submit it as a formal complaint.

Neither the complainant or respondent will be required to provide substantive information about the alleged misconduct during their pre-investigative meetings. However, the college is required to notify both parties if it opens an investigation. Such notification includes: identity of the parties, the specific section of this policy allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident. Therefore, if this information is not contained in the report made to the college, the Title IX Coordinator may ask the reporting party/complainant some questions about the alleged incident, but only for the purpose of obtaining the minimal information required to determine if an investigation is warranted.

Supportive Measures

During the pre-investigation meeting, the Title IX Coordinator will consider whether to issue supportive measures. The purpose of supportive measures is, to the extent possible, to ensure the safety of all persons involved, reduce concerns for personal physical and emotional safety and overall prevent creation of a hostile environment for the individuals and the community. Supportive measures are designed to restore or preserve equal access to the education program or activity, without unreasonably burdening the other party and will be considered immediately, regardless of whether the complainant chooses to report the crime to local law enforcement. Examples of supportive measures may include, but are not limited to: no contact advisories; providing alternative workplace arrangements; restrictions to campus locations and activities; referring the employee to appropriate resources for developing a safety plan, seeking medical attention or counseling; assisting with a leave of absence from work; removing the employee's name from all directories; and interim suspension. The Title IX Coordinator will collaborate with the Provost and Dean of the Faculty and/or Vice President of the division for the parties involved regarding supportive measures.

The college will make information available to complainants on the right to seek orders for protection, no contact orders, or restraining orders.

Emergency Removal (Administrative Leave)

Prior to the Emergency Removal of an individual from campus due to safety risk, the following criteria shall be met:

- The individual being removed shall receive written notice of the Emergency Removal,
- An individualized safety and risk analysis to determine whether an immediate threat to the physical health or safety of a college community member or other individual arising from the allegations of sexual misconduct justifies removal, and
- An opportunity to challenge the decision is provided to the individual being removed from campus.

This process does not preclude Westmont from placing a non-student employee on administrative leave pending the outcome of the resolution process. The Title IX Coordinator will collaborate with the Provost and Dean of the Faculty, Human Resources and/or Vice President for the division for the parties involved regarding emergency removal.

Notice of Allegations and Initiation of Investigation

If the Title IX Coordinator receives a formal complaint and initiates an investigation, the parties will receive a written notice of allegations. The notice of allegations will include:

- notice of allegations, including sufficient details known at the time and with sufficient time to prepare a response before the initial interview.
- identity of the parties.
- the specific section of this policy allegedly violated.
- the precise conduct allegedly constituting the potential violation.
- the date and location of the alleged incident.

- indication that the respondent is presumed not responsible and that determination of responsibility is made at the conclusion of the resolution process.
- a statement about a right to an advisor of choice who may be but is not required to be an attorney.
- notice of the resolution process, including any informal resolution process.
- a statement that parties may inspect and review evidence.
- a statement informing parties that knowingly making false statements or knowingly submitting false information is prohibited.

If additional allegations about the complainant or respondent arise during the resolution process, notice will be provided to the complainant and respondent.

The Title IX Coordinator will arrange for an external independent investigator to schedule separate investigative meetings for the parties. The burden of proof and gathering evidence is on the college, not the parties. In anticipation of the interviews, the investigator will ask the parties to submit written statements to be reviewed by the investigator prior to the interview. As an alternative, the parties may elect to have the information they provide during their substantive investigative interviews to serve as their written statement on the allegation. The parties may also identify a list of any witnesses with information pertinent to the alleged conduct. After conducting interviews with both parties, the investigator will do one of the following:

- determine that there is not enough information to warrant further investigation and will inform the Title IX Coordinator;
- offer informal resolution to the parties;
- proceed with full investigation if informal resolution is not an option.

INFORMAL RESOLUTION PROCEEDINGS

Informal resolution may be offered at any time in the process after a formal complaint has been filed and prior to determination. The parties may voluntarily agree to forego a full investigation and any subsequent Sexual Misconduct Hearing Panel proceedings and instead participate in an informal process to reach a mutually acceptable resolution. Parties are never required to participate in an informal resolution process however their voluntary written consent is required to pursue an informal resolution process.

The college will not condition employment/continuing employment or enjoyment of any other right on a party's waiver of the right to an investigation and adjudication of formal complaint. Informal resolution may not be offered or facilitated in cases alleging a non-student employee sexually harassed a student.

In an informal resolution, both parties will receive written notice disclosing

- the allegations;
- the requirements of the informal resolution process including circumstances when it precludes the parties from resuming a formal complaint for the same allegation provided, however at any time prior to agreeing to a resolution, any part has the right to withdraw from the informal resolution process and resume the resolution process with respect to the formal complaint;

- the consequences resulting from participating in the informal resolution, including records that are maintained and could be shared.

The Title IX Coordinator or designee will facilitate the informal resolution process.

FORMAL RESOLUTION PROCEDURES

When the informal resolution procedures are not possible or appropriate, or fail to satisfactorily resolve the concern, the investigator will complete a full investigation and determine whether or not there is sufficient information to forward the matter to the Hearing Panel for resolution.

Review and Respond

After completing the investigation but prior to finalizing the investigation report, the complainant and the respondent will have equal opportunity to inspect and review any evidence obtained that is directly related to the allegations and a draft of the investigation report. This includes evidence upon which the college does not intend to rely in reaching a determination, including evidence obtained from a party or other source. The investigative report will include a summary of interviews conducted of each party as well as relevant evidence. Each party will be permitted to review it for accuracy and completeness and respond in writing to alert the investigator if she/he believes any modification in the summary is needed. Parties will receive evidence in hard copy or electronic format and will be given at least ten (10) calendar days to submit a written response, which may be provided for the other party's review. Then, the investigator will finalize a written investigation report that fairly summarizes relevant evidence and send it to the parties in electronic or hard copy form at least ten (10) calendar days prior to the hearing panel meeting. The investigator may amend the investigation report based on written responses and submit it to the Title IX Coordinator, who will forward it to the Title IX Deputy who serves as the Chair on the non-student employee Hearing Panel.

Hearing Panel

The Hearing Panel is composed of a minimum of three staff or faculty who have been trained to resolve allegations made under this policy. The Title IX Deputy serves as the chair of the Hearing Panel for non-student employee situations. The chair's role is to facilitate the Hearing Panel and ensure compliance with the process and procedures outlined below.

Before the Hearing Panel Meeting

Submission of Documentary Information

Prior to any Hearing Panel meeting, the complainant and respondent may offer documentary information in support or defense of the complaint, including any questions that they would like asked of the other party or witnesses during the conduct proceedings. The Hearing Panel Chair will inform the complainant and respondent of the deadline for the submission of such information. Information submitted after the deadline will generally not be accepted unless prior permission from the Chair is received. The Hearing Panel Chair will review all information submitted and return all that is not relevant or material to the complaint or that is submitted after the deadline when no exception to timely submission is warranted. It is within the sole

discretion of the Chair to determine what information is relevant and appropriate and whether extenuating circumstances warrant an exception to the deadline given to the parties for the submission of the information described here.

Inspection and Review of Documentary Information

The Hearing Panel Chair (Title IX deputy) will assemble for the complainant, respondent and Hearing Panel's review, all documentary information related to the allegations. Documentary information will generally consist of, but is not limited to:

- A statement of the specific allegations to be resolved by the Hearing Panel;
- A written summary of the investigation conducted;
- All relevant and material statements and documents collected by the investigator;
- All relevant and material statements and documents submitted by the complainant and respondent.

Notification of Hearing Panel Meetings

Within seven days of the Hearing Panel's review of documentary information, the Title IX deputy will notify the complainant and the respondent of the time and date of its first witness meeting. Generally, the complainant and respondent will receive seventy-two (72) hours advance notice of the scheduled meeting time for their respective meetings with the Hearing Panel. While participation in the Hearing Panel process is voluntary, Westmont community members are expected to participate in the Hearing Panel process upon request. Should a party or witness choose not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in the questioning, then the adjudicator(s) may not rely on any prior statement made by that party or witness (including those contained in the investigation report or made at the hearing) in the ultimate determination of responsibility. The college is committed to prompt resolution of all Hearing Panel meetings. However, the Title IX deputy in his or her sole discretion may extend or modify the above-referenced timeframes.

Hearing Panel Meeting

Hearing Panel meetings are private with the exception of individuals named in the "Live Hearing" section below who may attend that portion of the panel proceedings. Once convened by the Chair, the Hearing Panel may conduct several meetings as part of its proceedings under this policy. Generally, these meetings fall into three categories: meetings to prepare for the "live hearing" meetings, the "live hearing" meetings in which the panel meets individually with the parties and any relevant witnesses, and deliberation meetings. In addition to its meetings with the complainant and respondent, the Hearing Panel may meet with all, some or none of the witnesses identified in the documentary information it receives.

Live Hearing

The live hearing portion of the Hearing Panel proceedings may be conducted with all parties physically present in the same geographic location or at the college's discretion, any or all parties, witnesses and other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the college will provide for the live hearing portion of the

Hearing Panel proceedings to occur with the parties located in separate rooms with technology enabling the Hearing Panel and the parties to simultaneously see and hear the party or witness answering questions. At no time may the complainant or respondent directly address each other or a witness before the panel, and the complainant and respondent may only address the panel during the portion of the proceedings in which they are meeting with the panel.

The complainant and the respondent will be able to question and cross examine one another or any other witnesses (if applicable) through their advisor in the live hearing portion of the Hearing Panel proceedings. The Hearing Panel cannot draw any 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.

The college will create an audio or audiovisual recording or transcript of any live hearing held and make it available to the parties for inspection and review.

As a general rule, the Hearing Panel will meet with the following individuals over the course of one or more days:

- The complainant;
- The respondent;
- Any witnesses requested by the Hearing Panel.

Each of these will meet individually with the Hearing Panel when called by the panel. Prior to the Hearing Panel deliberations, the Chair will give members of the panel the opportunity to ask follow up questions of the complainant, the respondent and any witnesses previously met. The Chair will also give the complainant and respondent the opportunity to request follow-up questions of any previous witness (including the other party). Therefore, all participants should remain available for recall prior to the Hearing Panel's deliberations.

Deliberation

At the conclusion of its meetings, the Hearing Panel will deliberate in private, and, weighing all of the available information, the Hearing Panel will determine whether it is more likely than not that a violation of policy occurred. This level of proof, which is the legal standard in California for these proceedings, is commonly referred to as a "preponderance of the evidence." This level is a lesser level than that used in the criminal justice system, which requires that a case be established "beyond a reasonable doubt." The Hearing Panel will determine one of the following appropriate findings by majority vote:

- It is more likely than not that the alleged violation occurred, and the respondent is responsible; the Hearing Panel will impose sanctions, as appropriate; or
- It is more likely than not that the alleged violation did not occur and the respondent is not responsible; or
- There is not sufficient information available to make a determination.

Note: In the event of a finding of (2) or (3) is reached by the Hearing Panel, the finding is not necessarily based on the accuracy of the charges but rather on the strength of the information available.

Outcome

The chair of the Hearing Panel will communicate the outcome of the Hearing Panel to the respondent and the complainant in writing generally within seven (7) business days. Unavoidable delays in providing notice of the result may include absence of the parties, concurrent law enforcement activity or the need for language assistance or accommodations of disability, and shall not constitute an appealable procedural error. Results will be delivered simultaneously to all parties and include:

- the name of the complainant and respondent;
- the allegations potentially constituting unlawful sexual discrimination, sexual harassment, sexual assault, stalking, dating or domestic violence;
- the procedural steps taken since the complaint;
- the findings of fact;
- the conclusion regarding application of the policy to the facts;
- a statement of and rationale for the result of each allegation:
 - determination of responsibility;
 - sanctions imposed on the respondent;
 - whether remedies will be provided to the complainant;
- appeal information; and
- the date the results become final, which is the date the parties receive the written determination of the appeal or the date on which an appeal would no longer be timely.

Disclosure of the result in this manner does not violate the privacy rights of an employee under privacy laws and is consistent with the college's obligations under the Clery Act.

Sanctions

Depending on circumstances and the severity of the conduct, corrective action will vary. For employees resolution steps could include one or more of the following: counseling, training, advising or coaching from a professional, verbal or written warning, loss of staff or faculty privileges, demotion, suspension, termination, or criminal prosecution. For tenured faculty, decisions involving leave, demotion, suspension or termination will be recommended to the Provost and Dean of the Faculty and the President for their review and final decision. Sanctions may be imposed on an individual who knowingly provided false information or initiated in bad faith a claim of unlawful sexual misconduct.

OTHER REMEDIAL EFFORTS

In addition to the imposition of sanctions, the college may develop and/or distribute additional education and training for students and other members of the college community on prevention and awareness of sexual assault, stalking, dating and domestic violence; provide increased supervision, monitoring and/or campus safety presence in locations where violations under this policy are found to have occurred; revise and publicize procedures; or conduct climate surveys.

APPEALS

Both the complainant and the respondent may seek review of a decision made under this policy by making an appeal. Appeals must be submitted to the Title IX Coordinator in writing via email to eschulze@westmont.edu within three (3) business days of the decision. Appeals will be forwarded to and reviewed by the Appeal Officer(s). Any requests for extension must be made in writing to the Title IX Coordinator within the original three-day appeal time period. Extensions for appeals are rarely granted, and will only be granted in extremely unusual circumstances. The decision to grant or deny an extension is within the sole discretion of the Title IX Coordinator.

Only one request per individual involved as complainant or respondent may be submitted. Appeals should be written by the complainant or respondent themselves and not a third party.

APPEAL CRITERIA

- An appeal must be in writing and consist of a statement outlining and supporting the specific grounds on which the appeal is being made.

The appeal is not a rehearing of the original case and the role of the Appeal Officer(s) is not to substitute his or her own judgment for the judgment of the Hearing Panel. The role of the Appeal Officer(s) is to determine whether a new decision should be considered due to a procedural error, the availability of new information, or conflict of interest or bias. Therefore, an appeal must be based on one or more of the following grounds:

- A process or procedural error was made that was significantly prejudicial to the result of the proceedings as it affects the appealing party.
- New information that was not available or known to the party appealing at the time of the proceedings has arisen which, when considered, may materially alter the result. Note: Information that the appealing party chose not to present at the time of the hearing is not considered new information.
- The sanctions imposed are so severe — considering the nature of the violation, complainant or respondent attitude, previous inappropriate conduct, impact of the respondent's or complainant's behavior on the community and other specific circumstances — that they demonstrate an abuse of discretion by the decision making body. (Note: a complainant reporting party may use the same grounds to appeal that sanctions imposed are not severe enough.)
- The Title IX Coordinator, investigator or Hearing Panel Member had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that significantly affected the outcome of the matter.

It is not enough to simply assert one of the grounds for appeal. The written statement accompanying the appeal form must provide information that supports grounds upon which the appealing party bases the appeal. For example: If the party asserts that a procedural error occurred, he or she must name the procedure with specificity and explain how the error was significantly prejudicial to the decision made. If an appeal does not contain sufficient information to support the grounds upon which the appealing party bases the appeal, review of the appeal will be denied.

During the appeal process, the Title IX Coordinator may choose to set aside sanctions as appropriate. If the Title IX Coordinator decides to set aside any sanctions during the appeal process, the Title IX Coordinator will inform both the complainant and the respondent.

Preliminary Review of Appeal

The Appeal Officer(s) will grant or deny review of decisions rendered by a Hearing Panel based on the student's written appeal. The decision to grant or deny review of the original decision will be made within three business days following the deadline to have submitted an appeal.

1. *Review Denied:* The Appeal Officer(s) determines that a review of the original decision will not be conducted because the appeal fails to meet the criteria outlined above. In such cases, the Appeal Officer and the Title IX Coordinator will make no inquiry beyond the written material submitted and the original decision and any sanctions imposed will stand.
2. *Review Granted:* If the written appeal satisfies the appeal criteria, the Appeal Officer(s) will grant a review of the original decision.

If the Appeal Officer(s) grants a review of the appeal, the Appeal Officer(s) will communicate to the non-appealing party this decision and provide the non-appealing party an opportunity to view a copy of the appeal. Within three business days of such notification, the non-appealing party may submit a written statement to the Appeal Officer that he/she wishes to be considered during the appeal process.

Appeal Review

As part of the appeal review process, the Appeal Officer(s) will consider material and/or testimony previously presented or a written summary of the previous Hearing Panel meeting. The Appeal Officer(s) may, but is not required to, meet with the complainant, respondent, any witnesses and/or members of the Hearing Panel (if reviewed by an Appeal Officer) prior to making a decision regarding the appeal. The unappealing party shall have an opportunity to respond to the appeal.

Appeal Decision

Following a prompt and effective review, the Appeal Officer(s) will communicate a decision on the party's appeal no later than ten (10) business days following the decision to grant a review of the original decision. The decision will be in one of the two following forms:

1. *Original Decision Upheld:* Where review of the original decision does not demonstrate a different decision is warranted, the original decision will be upheld.
2. *Original Decision Modified:* Where review of the original decision demonstrates support for the appeal and a different decision is warranted, the Appeal Officer(s) will modify the original decision. This decision may include sanctions being decreased, modified, or revoked. Only in instances when the complainant appeals the decision may sanctions be increased.

The decision on the appeal is final, and no other office will accept or review appeals following the decision.

TERMS (APPENDIX C)

ADJUDICATOR

Adjudicator refers to a college official responsible for serving on a Hearing Panel and rendering a decision in an unlawful sexual misconduct case in collaboration with fellow adjudicator(s).

APPEAL OFFICER

An appeal officer is an individual trained and appointed by the Title IX Coordinator to hear appeals to decisions rendered in unlawful sexual misconduct cases. The Appeal Officer is someone different from the Title IX Coordinator, investigator and adjudicator, and has no conflict of interest or bias.

COMMUNITY MEMBER

Community member refers to the college's students, faculty, staff, visitors, volunteers, vendors, consultants, third parties, and any person that provides services to the college.

FORMAL COMPLAINT

A formal complaint is a document filed by a complainant (containing the complainant's physical or digital signature) or signed by the Title IX Coordinator, Title IX Deputy or Dean of Students alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.

COMPLAINANT

A complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.. Prior to signing a formal complaint, this individual may be referred to as a "reporting party."

HEARING PANEL

A Hearing Panel is the adjudicating body composed of two (or more) adjudicators and either the Dean of Students or the Title IX deputy. The Panel's responsibilities are to receive the report from the investigators, meet with the complainant, respondent and witnesses, then render a decision. The Dean of Students chairs the Hearing Panel for cases between students and for allegations in which the student is the respondent. The Title IX deputy chairs the Hearing Panel for all other cases.

INVESTIGATOR

An investigator is a faculty or staff member or administrator appointed by the Title IX Coordinator who is trained to respond to formal and informal complaints of unlawful sexual misconduct.

PROCEEDING

The term proceeding includes all activities, including but not limited to proceedings (both informal and formal), related to a non-criminal resolution of an institutional complaint, including: fact-finding investigations and formal or informal meetings. It does not include meetings between victims and officials regarding accommodations or protective measures.

REPORT RECIPIENT

A report recipient is a college official who has responsibility to report a violation of this policy to the Title IX coordinator. Sharing information with a report recipient is considered reporting it to the college.

RESPONDENT

A respondent is an individual who has been reported to be the perpetrator of conduct that could constitute unlawful sexual misconduct.

RESULT

A result is any initial, interim, and final resolution or decision by any official or entity authorized to resolve complaint matters within an institution. The result must include sanctions imposed. The result also must include the rationale for the result and the sanctions.

RETALIATION

Retaliation means any materially adverse action, intimidation, threat, coercion, discrimination, act intended to cause fear, or exertion of pressure against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because an individual has made a report or complaint, testified, assisted or participated or refused to participate in any manner in a sexual misconduct proceeding or hearing.

TITLE IX COORDINATOR

The Title IX Coordinator is the administrator who oversees the Title IX policies and procedures for the college and ensures complaints are addressed according to policy and procedures. For the purposes of this policy,

Dr. Edee Schulze, Vice President for Student Life, serves as Title IX Coordinator with primary responsibility for oversight and enforcement of this Policy, as well as identifying and addressing any systemic problems that arise during the review of complaints. Dr. Schulze may be contacted at (805) 565-6028 or eschulze@westmont.edu.

TITLE IX DEPUTY

A Title IX Deputy is the administrator who works with the Title IX Coordinator to oversee Title IX adjudications for non-student employees under this policy.

RECORDKEEPING (APPENDIX D)

Under the Clery Act, the college is obligated to report annually unlawful sexual misconduct and issue a timely warning through the Campus Safety Office. Any publically available notice or recordkeeping will keep the victim's name confidential and any identifying information will be protected to the extent reasonably possible to take appropriate preventative measures or to comply with applicable law. Campus Safety has made this report viewable online on its webpage at westmont.edu/campus-safety.

Institutional recordkeeping for Title IX includes maintaining for seven (7) years:

- investigation and adjudication records including:
 - Any determination regarding responsibility;
 - Any audio or audiovisual recording or transcript of the hearing
 - Any disciplinary sanctions imposed
 - Any remedies provided to the complainant
 - Any appeal and result; and
 - Any informal resolution and the result.
- Training materials for investigators, adjudicators, coordinators and persons designated to facilitate informal resolution processes;
- Any actions taken (including supportive measures) in response to a report of sexual misconduct, including
 - the basis for conclusion that response was not deliberately indifferent;
 - indication that the measures were designed to restore or preserve equal access to educational and workplace programs and activities;
 - if supportive measures were not provided, documentation of the reasons why such a response was not clearly unreasonable in light of the known circumstances.
- Additional details or explanations inserted after the time of resolution.

ADVISOR AGREEMENT (APPENDIX E)

The purpose of the advisor is to support an individual during the complaint process and verbalize questions during the live hearing portion of the Hearing Panel proceedings. An advisor may be any person, such as a college faculty or staff member, a family member, a close friend, an attorney or any other person. Advisors who are attorneys are subject to the same limitation on participation in the response and resolution process as other advisors and are provided at the expense of the party. If an advisor is an attorney, the college has the right to have its own legal counsel present for any meeting at which the attorney advisor is present. As an advisor, an individual must agree to the following provisions:

- An advisor may accompany the individual to in-person interviews or other meetings during the complaint resolution process.
- The college will not as a general matter, unnecessarily delay its processes to accommodate the schedules of advisors.
- An advisor may not interrupt or otherwise delay the complaint process.

