

Title IX Sexual Harassment Policy and Procedure Training

Part I



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Title IX Training Sessions

- Goal is for you to understand the relevant policies, procedures and your role.
- Three training sessions:
 - Session I: Title IX policy overview, definitions, and scope
 - Session II: Investigations
 - Session III: Hearings and appeals



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Agenda for Session I

- Background on Title IX
- Review of recent changes in regulations
- Overview of Title IX Sexual Harassment Policy and Procedures
- Scope of Policy
- Prohibited Conduct and Important Definitions
- Reporting Options
- Overview of Grievance Process



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Title IX and Regulations



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Title IX

Title IX of the Education Amendments of 1972 (Title IX) provides that:

“[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...”



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Regulations

- September 2017: Dept. of Education withdrew the 2011 Dear Colleague Letter and announced the intention to undertake formal rulemaking process
- November 2018: Dept. of Education released Notice of Proposed Rulemaking (essentially a draft of the regulations)
- May 6, 2020: Dept. of Education issued final regulations regarding Title IX
- August 14, 2020: Implementation date of the new Title IX regulations



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Overview of Regulations

- Must respond in a way that is not deliberately indifferent when school has actual knowledge of sexual harassment
- “Sexual harassment” is defined by the regulations
- Must offer supportive measures
- Requires a signed formal complaint to start the grievance process
- Formal complaints must be dismissed if they do not meet the jurisdictional requirements



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Overview of Regulations

- Regulations include specific requirements for the grievance process used to address formal complaints
- Decision maker must be separate from investigator (no single investigator model)
- Must include a live hearing with the ability for parties' advisors to cross examine other parties/witnesses



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Policy, Procedures, and Resources

- Westminster College adopted its Title IX Sexual Harassment: Policy, Procedures, and Resources on August 14, 2020 in line with the new regulations.
- Contains the statement of policy, grievance procedures, and resources for individuals who have experienced sexual harassment.



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Title IX Coordinator

- Reports may be made in person, by mail, by telephone, or by e-mail using the contact information listed for the Title IX Coordinator. Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed below for the Title IX Coordinator.

*Associate VP & Chief HR
Officer/ Title IX Coordinator
573-592-5226
mandy.march@wcmo.edu
Westminster Hall 146*



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Title IX Deputy Coordinators:

- Deputy Title IX Coordinators provide support to the Title IX Coordinators on issues in the following areas:
 - Vice President/Dean of Student Life – students issues
 - Director of the LOC - student athlete issues
 - Vice President of Academic Affairs/Dean of Faculty – faculty issues
- These Deputy Title IX Coordinators can also provide oversight in case the Title IX Coordinator is unavailable or has a conflict of interest with a party in a grievance process.

*Vice President and
Dean of Student Life*

573-592-5269 or
573-592-5242

Kasi.Lacey@wcmo.edu

HAC-Craighead Office

*Vice President of
Academic Affairs and
Dean of Faculty*

573-592-5212

David.Roebuck@wcmo.edu

Westminster Hall 127

*Director of the Learning
Opportunities Center*

573-592-5504

Karen.Tompsonwolfe@wcmo.edu

Westminster Hall 34



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Scope of the Policy



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Scope of Policy

- The Sexual Harassment Grievance Process pertains to **Sexual Harassment** under Title IX, as defined by this policy, committed by or against students and/or employees, when:
 - (1) the conduct occurs on campus or other property owned or controlled by the College; or
 - (2) the conduct occurs in the context of a College **employment or education program or activity** within the United States.



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Scope of Policy

- The College's education program and activities includes locations, events, or circumstances over which the College exercises substantial control over both the Respondent and the context in which harassment occurs, and includes any building owned or controlled by a student organization that is officially recognized by the College (such as a fraternity or sorority house).



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Scope of Policy

- Complaints that do not fall under the scope of this process will be addressed by the College's Anti-Harassment and Discrimination Policy or other applicable student or employee policy.
- Please refer to the student or employee handbooks, or contact the Title IX Coordinator if you have questions about what policy/grievance process applies to a specific complaint.



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Hypothetical

- A freshman student athlete reports that after drinking in his residence hall, he attended a party at an off-campus apartment hosted by upper classmen who are teammates. He reports that he was given several drinks while at the party and has few memories after the first hour. He reports he woke up on the couch of the apartment and found that he was not wearing pants. He reports there was another individual on the couch, who also was not wearing pants. He reports that he returned to his residence hall and then called his RA later that day.



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Prohibited Conduct and Important Definitions



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Sexual Harassment

- For the purposes of this policy, Sexual Harassment is defined as conduct based on sex that may be one or more of following:
 - 1) Employee conditioning provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (i.e., a quid pro quo), or
 - 2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or
 - 3) Sexual assault, stalking, dating/domestic violence, as defined herein.



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Sexual Assault

- Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.



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Sexual Assault

- Sexual Assault includes, but is not limited to, the following acts when they occur without consent of the victim:
 - Any penetration, however slight, of the genitals or anus of one person with the genitals of another person,
 - Any act involving the genitals of one person and the hand, mouth, tongue, or anus of another person,
 - Any sexual act involving penetration, however slight, of the genitals or anus of one person by a finger, instrument, or object,
 - Touching of another person's genitals or breasts under or over the clothing, or
 - Touching of one person with the genitals of another person under or over the clothing,



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Dating Violence

- Violence by a person who has been in a romantic or intimate relationship with the individual to whom the violence is directed.
- Whether there was, such a relationship will be gauged by its length, type, and frequency of interaction.



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Domestic Violence

- Domestic Violence is a felony or misdemeanor crime of violence committed:
 - By a current or former spouse or intimate partner of the victim
 - By a person with whom the victim shares a child in common
 - By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred
 - By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred



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Stalking

- Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her/their own safety or the safety of others, or suffer substantial emotional distress.
- For purposes of this policy:
 - “Course of conduct” means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property
 - “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling
 - “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim



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Hypothetical

- A student alleges that a professor is engaging in microaggressions based on gender-biased view of women. The student provides examples of images used in presentations in two of the class meetings. The student asks to file a complaint against the professor.



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Understanding Consent

- Consent is the **unambiguous** and **voluntary** agreement to engage in a specific sexual activity during a sexual encounter with a specific individual.
- Consent must be **informed, freely given, and mutual**.
- Consent is **clear, mutually understandable words or actions** communicating an agreement to engage in specific sexual or intimate conduct.



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Understanding Consent

- A current or past dating or sexual relationship, by itself, does not create consent.
- Consent to sexual activity in the past does not create consent to future sexual activity.
- Consent to sexual activity with one person does not create consent to sexual activity with another person.
- Consent to one sexual activity does not create consent to another sexual activity.
- Consent can be withdrawn at any time during a sexual encounter.



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Understanding Consent

- Consent cannot be given as the result of force, coercion, intimidation, or threats.
- Consent cannot be given by one who is incapacitated, voluntarily or involuntarily, due to a physical condition, including, but not limited to, the use or influence of drugs or alcohol, or being in a state of unconsciousness, sleep, or other state in which the person is unaware that sexual activity is occurring.



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Understanding Consent

- If there is any doubt as to another person's capacity to give consent, community members should assume the other person does not have the capacity to give consent.
- A person cannot consent if he/she/they are under the age of consent or if the person has a mental disability that impairs the individual's ability to provide consent.



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Hypothetical

- Student reports that after drinking at a bar, she returned to her residence hall and went to a party in another student's room. She reports that she was having trouble walking by the end of the night and that the male student whose room the party was in told her she could sleep there. She reports waking up, with no clothes on, in the male student's bed, with signs that intercourse occurred.
- The male student reports that the female student came to his room, took her clothes off, and climbed into bed with him. He reports he could tell she had been drinking, but she did not seem intoxicated. He reports that he had also been drinking that night.



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Reporting Sexual Harassment

Reporting Options, Supportive Measures, and Emergency Removals



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Reporting to the College

- Any person may report Sexual Harassment whether or not the person reporting is the person alleged to be the victim of conduct that could constitute Sexual Harassment.
- Reports can be made to:
 - Associate VP & Chief HR Officer/Title IX Coordinator
 - 573-592-5226
 - mandy.march@wcmo.edu
 - Westminster Hall 146



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Reporting to the College

- Students may also notify faculty and staff of any incident of Sexual Harassment. With the exception of individuals who constitute Confidential Support Persons, all faculty and staff are considered mandatory reporters for purposes of this policy and are required to notify the Title IX Coordinator or Deputy Title IX Coordinators upon receipt of information regarding an alleged incident of Sexual Harassment.



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Reporting to the College

- Reporting Sexual Harassment to the Title IX Coordinator does not automatically start the grievance process.
- An individual can make a report of Sexual Harassment in order to obtain supportive measures and resources and is not required to file a Formal Complaint.
- There is no time limit on reporting Sexual Harassment, though the College encourages prompt reporting, as delayed reporting may hinder the College's ability to complete the grievance process.



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Confidential Reporting

- Students may seek confidential support and assistance from the Wellness Center staff and the Chaplain. These Confidential Support Persons will maintain the confidentiality about details of the incident reported to them.

Director of Counseling Services
573-592-5361

Sarah.stevens@wcmo.edu

Lower Level of Westminster
Hall/The Wellness Center

Director of the Center for Faith &
Service

573-592-5262

kiva.nice-webb@wcmo.edu

322 West 6th Street, Fulton, MO



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Other Reporting Options

- Individuals may make a criminal report with local law enforcement. A criminal investigation is separate from College's grievance process.
- Complainants are not required to report to law enforcement.
- For assistance in making a report to law enforcement, contact:
 - Director of Campus Security
 - 573-592-6231
 - jack.benke@wcmo.edu
 - 710 Westminster Avenue



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Responding to Reports

- Upon receiving a report of Sexual Harassment, the Title IX Coordinator will promptly contact the complainant confidentially to:
 - Discuss the availability of supportive measures,
 - Provide a copy of this policy,
 - Explain the process for filing a Formal Complaint and the grievance process,
 - Discuss the options available to the complainant and provide information about resources



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Supportive Measures

- Supportive Measures are individualized services designed to restore or preserve equal access to the College's education programs and activities, protect the safety of all parties and the educational environment, and/or to deter Sexual Harassment.
- Supportive measures should be non-punitive, nondisciplinary, and not unreasonably burdensome to the other party.
- The College will do everything possible to provide a climate that is sensitive to and respectful and supportive of individual needs.



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Supportive Measures

- Supportive measures will be provided if they are reasonably available and requested, regardless of whether the complainant chooses to file a Formal Complaint.
- Any supportive measures provided will be kept confidential to the extent that doing so will not impair the ability of the College to provide the supportive measure.



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Examples of Supportive Measures

- Campus counseling and support services
- Adjustments to academic requirements, such as extension of deadlines
- Additional academic support
- Adjustments to work or class schedules
- Changes in work locations or assignments
- Mutual restrictions on contact between the parties
- Leaves of absence



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Emergency Removal

- The College reserves the right to remove a student Respondent from its educational program or activity on an emergency basis. Such a removal may only occur if, after an individualized safety and risk analysis, the College determines an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. In the event a decision is made to remove a Respondent, he/she/they will be provided with notice by the Title IX Coordinator, and given the opportunity to challenge that decision immediately following the removal by submitting a request in writing to the Title IX Coordinator.



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Administrative Leave

- Likewise, a non-student employee Respondent may be placed on administrative leave during the pendency of the grievance process described in this Policy.



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Formal Complaints



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Formal Complaints

- A Formal Complaint is a document alleging Sexual Harassment against a Respondent and requesting that the College investigate the allegation of Sexual Harassment.
- Must be signed by the Complainant.
- The Complainant must be participating in or attempting to access a College education program or activity at the time the Formal Complaint is submitted.
- Starts the grievance process.



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Formal Complaints

- Title IX Coordinator may sign the Formal Complaint in limited circumstances, taking into consideration the specific facts and circumstances and whether there is a pattern of misconduct involving a particular Respondent.
- A Title IX Coordinator may only sign a Formal Complaint after he or she has contacted the Complainant and discussed supportive measures and the Formal Complaint process with the Complainant.
- The Title IX Coordinator must consider the Complainant's wishes for how the College responds to the report of Sexual Harassment.
- The Title IX Coordinator should balance campus safety concerns with respect for the wishes of the Complainant.



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Formal Complaints

- The Title IX Coordinator may consolidate Formal Complaints where the allegations of Sexual Harassment arise out of the same facts or circumstances.
- This could involve:
 - Complaints by multiple Complainants against a single Respondent
 - Complaints by a single Complainant against multiple Respondents
 - Multiple allegations against the same Respondent



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Mandatory Dismissal of Formal Complaints

- Formal Complaints of Sexual Harassment brought pursuant to this policy **must** be dismissed if:
 - 1. The conduct alleged would not constitute Sexual Harassment as defined in this Policy;
 - 2. The conduct did not occur in connection with a College education program or activity;
 - 3. The conduct did not occur against a person in the United States.



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Mandatory Dismissal of Formal Complaints

- However, such complaints may be subject to review and/or resolution under other policies, such as the College's Harassment and Discrimination policy
- Both the Complainant and Respondent will be notified, in writing, of the dismissal decision by the Title IX Coordinator or designee.
- Complainant and Respondent can appeal the dismissal of a Formal Complaint.



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Discretionary Dismissal

- Formal Complaints may be dismissed at the discretion of the Title IX Coordinator if:
 - The Complainant withdraws the Formal Complaint,
 - The Respondent is no longer enrolled in or employed by the College, or
 - In situations when gathering evidence sufficient to make a determination is not possible.



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Dismissals of Formal Complaints

- After an initial review of the Formal Complaint, the Title IX Coordinator will continue to monitor the investigation and evaluate the Formal Complaint to determine if the above criteria for dismissal apply. In the event of a dismissal (either mandatory or discretionary) both parties will be notified in writing and given the opportunity to appeal.
- To the extent the behavior alleged in the Formal Complaint could constitute a violation of another College policy, it may be pursued under that policy. The Title IX Coordinator has the discretion to refer the allegations to the appropriate College official.



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Hypothetical

- A former student files a Formal Complaint alleging that he was sexually harassed by an adjunct professor when he was a student 5 years ago.



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Serving Impartially

Avoiding prejudice, conflicts of interest, and bias



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Serving Impartially

- It is important that the Sexual Harassment Grievance Process is free from actual or perceived bias or conflicts of interest that would materially impact the outcome.
- Parties can raise concerns about potential conflict of interest or bias to the Title IX Coordinator.
- Title IX Coordinator can appoint an alternate official if appropriate.



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Serving Impartially

- Important that throughout process, individuals who administer process maintain an open mind – that they are neutral and unbiased.
- Only form an opinion at the conclusion of the process.
- The next training sessions will cover investigations and hearings in more depth and will discuss impartiality in those contexts.



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Serving Impartially

- Be mindful of prior interactions or relationships that may give the appearance of a conflict of interest – and make the Title IX Coordinator aware if any arise.
- Hearing Officers are not charged with finding a *particular* outcome and should avoid pre-conceived notions and consider *only* the information provided during the process.
- And, Hearing Officers must treat both parties equitably and with respect.



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Grievance Process and Procedures



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General Provisions

- Respondent is presumed to be not responsible for a policy violation unless and until he or she is found responsible by the decision maker at the conclusion of the grievance process.
- Parties can report if they believe individuals involved in investigating or adjudicating the complaint have conflicts of interest or bias
- Generally, the grievance process should be completed within 120 days, but extensions may be granted for good cause.



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Notice of Formal Complaint

- The written notice should include, if known, the identity of the parties, the conduct alleged to be Sexual Harassment, and the date(s) and location(s) of the incident(s).
- The notice will also include a statement that the Respondent is presumed to be not responsible for any policy violations.
- The notice must also inform the parties that they have the right to an advisor of their choice during the grievance process, that they may inspect and review evidence gathered during the investigation, and that College policies prohibit knowingly furnishing false information to any College official.



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Notice of Formal Complaint

- If during the course of the investigation, additional allegations are going to be investigated that were not included in the original notice, the Title IX Coordinator or designee will issue a supplemental written notice to the parties.
- Parties will also be provided with notice of all meetings, interviews, or hearings with sufficient time to prepare. Such notice will include the date, time, location, participants, and purpose of the meeting, interview, or hearing.



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Advisors

- Each party will be given the same opportunity to select an advisor of their choice.
- Advisors can be a friend, family member, faculty member, mentor, attorney, or any other person of the party's choice who is available and agrees to serve as the advisor.
- A party must provide notice of who will serve as their advisor during any grievance process hearing at least 5 working days prior to the hearing.
- If a party does not have an advisor for a grievance hearing, the College will provide an advisor chosen by the College at no cost to the party. This appointed advisor may be a College employee or may be an outside individual contracted to serve as an advisor.



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Advisors

- During the investigation process, the advisor may attend meetings between the party and the Investigator(s).
- Advisors may confer with the party during any meeting, interview, or hearing, but generally may not speak on behalf of the party. Their purpose during the investigation meeting is to provide support to the party they are advising.
- The only time an advisor may speak on behalf of the party is to conduct cross examination during the grievance hearing.



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Advisors

- Any advisor who fails to comply with these policies, the Rules of Procedure and Decorum, and/or who does not treat all others with respect may be warned by for his/her/their first infraction.
- An advisor may be asked to leave the grievance proceeding if after being warned he/she/they continue to violate the policies and Rules.
- If an advisor is asked to leave, the proceeding will end and be continued at another time when the party has an advisor.
- Title IX Coordinator may decide if the removed advisor can return.



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Investigation

- Investigation will be fair and thorough.
- Title IX Coordinator will appoint Investigator(s), generally the Title IX Coordinator and the Director of Campus Security, but can be another College employee or outside individual.
- *Investigators must be free from conflicts of interest or bias.*
- Investigators will meet with both parties.
- Both parties can identify potential witnesses and submit evidence to the investigators.
- Burden of proof and burden of gathering sufficient evidence rests on the College.



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Investigation

- Both parties have the opportunity to review evidence at the conclusion of the investigation and submit a written response to the investigator.
- Investigators will prepare a written report summarizing the investigation and all the relevant evidence gathered.
- Report will be provided to the parties at least 10 days before the hearing.



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Hearing

- After the investigation is completed, there will be a live hearing before Hearing Officer, who will act as decision maker.
- Live hearing may be conducted in person or virtually.
- Hearing must be recorded.
- Investigators will make all evidence available at the hearing. Parties may refer to the evidence and/or use it in cross examination.



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Hearing

- The Investigators will provide a copy of the investigative report and all evidence that is relevant to the allegations in the formal complaint to the Hearing Officer.
- Hearing Officer may not defer to the investigative report, and must objectively evaluate all relevant evidence and independently reach a determination regarding responsibility.
- The Investigators, Complainant, and Respondent all have the ability to testify and call witnesses at the hearing, and to provide evidence to the Hearing Officer.
- The Hearing Officer will have the opportunity to ask questions of all parties and witnesses during the hearing.



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Cross Examination

- After the Hearing Officer asks their questions, each Title IX Grievance Process Advisor will ask all relevant questions directly to the other party and/or witnesses, including follow-up questions and those challenging credibility.
- At no time will a Complainant or Respondent be allowed to conduct cross examination of witnesses or the other party personally.
- Advisors must abide by the Rules of Procedure and Decorum in questioning parties and witnesses.
- Any advisor who does not abide by the Rules of Procedure and Decorum will be warned or dismissed from the hearing at the discretion of the Hearing Officer.



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Cross Examination

- The Hearing Officer must not rely on statements from any individual who does not submit to cross examination in reaching a determination regarding responsibility.
 - Limited exception for a statement of a party made against his/her/their interest.
- The Hearing Officer cannot draw an inference about a determination of responsibility based solely on a party's or witness's absence from the live hearing or refusal to submit to cross examination.



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Cross Examination

- The Hearing Officer will state whether each question is relevant before the questions is answered, and explain any decision to exclude a question as not relevant.
- Questions or evidence that are deemed irrelevant by the Hearing Officer will be excluded from the hearing.
- Formal rules of evidence shall not apply.



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Determination of Responsibility

- Hearing Officer makes a determination of “responsible” or “not responsible” using the preponderance of the evidence standard.
- Preponderance of the evidence means that it is more likely than not that the Respondent engaged in conduct that meets the definition of Sexual Harassment.
- Hearing Officer must draft a written determination letter outlining the rationale for the decision.



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Sanctions and Remedies

- If a Respondent is found responsible for a policy violation, the determination letter will also include any sanctions that will be imposed. Potential sanctions are included in the policy.
- In addition to sanctions imposed on the Respondent, remedies can be offered to the Complainant in order to restore and preserve equal access to the College's educational program and activities.
- Remedies may be, but are not limited to, a continuation of previously offered supportive measures. Additionally, remedies may burden the Respondent or be punitive/disciplinary in nature.



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Appeals

- Both Complainant and Respondent can appeal the determination of responsibility or the dismissal of a Formal Complaint.
- Appeals of such decisions are allowed on the following bases:
 - Procedural irregularity or error that affected the outcome of the matter;
 - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 - The Title IX Coordinator, Investigators, or Hearing Officer had a conflict of interest or bias for or against the Complainant or Respondent which may have affected the outcome of the grievance process.



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Retaliation

- The College strictly prohibits retaliation of any kind against an individual for reporting Sexual Harassment pursuant to this Policy, assisting someone with a complaint of Sexual Harassment, or participating in the grievance process following a formal complaint of Sexual Harassment.
- Any incidents of alleged retaliation should be immediately reported to the Title IX Coordinator or the Deputy Title IX Coordinators. The College will take appropriate corrective action, including disciplinary action, up to and including dismissal or expulsion, if retaliation occurs.



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Thank you for attending!

For questions, please contact:

Associate VP & Chief HR Officer/ Title IX Coordinator

573-592-5226

mandy.march@wcmo.edu



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