



WESTCLIFF
UNIVERSITY
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Title IX

2020-2021



Title IX Regulations & Policy

The U.S. Department of Education (ED) enforces Title IX which protects students and employees from discrimination based on sex in education programs or activities that receive Federal financial assistance.

Title IX of the Education Amendments of 1972 (Title IX) states:

No 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.

Westcliff University (the "University") does not discriminate in its employment practices or in its educational programs or activities on the basis of sex. Westcliff University also prohibits retaliation against any person opposing discrimination or participating in any discrimination investigation or complaint process internally or externally. Reports of misconduct, questions regarding Title IX, and concerns about noncompliance should be directed to the Title IX Coordinator. For a complete copy of the policy or for more information, please contact the Title IX Coordinator or the [Assistant Secretary of Education within the Office for Civil Rights \(OCR\)](#). Please see the University's Title IX policy for additional information including how to make a report and the University's Grievance Procedure.

If you believe that you have experienced or witnessed other incidents of discrimination or sexual misconduct, please follow the procedures outlined in the University's Code of Conduct, which can be found on the University's [website](#).

The University reserves the right to make changes to this policy as necessary, and once those changes are posted online, they are in effect. If government laws, regulations or court holdings change requirements in a way that affects this policy, the policy will be construed to comply with the most recent laws, regulations or holdings.

Title IX Coordinator

The Title IX Coordinator coordinates the University's efforts to comply with its Title IX responsibilities.

Title IX Coordinator: April Vuong

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The Title IX Coordinator is responsible for implementing the University's Title IX policy, intaking reports and Formal Complaints of Sexual Harassment, providing supportive measures and maintaining accurate Clery Act crime statistics.

Any person can report sex discrimination, including Sexual Harassment (whether or not the person reporting is the alleged victim) in person, by mail, telephone, or e-mail, using the contact information listed above for the Title IX Coordinator/Deputy. A report can be made at any time, including during non-business hours. However, responses to reports made outside of business hours, including during weekends and holidays, may be delayed.

Key Definitions

Sexual Harassment: Conduct that includes one or more of the following:

1. A University employee conditioning educational benefits or participation on an individual's participation in unwelcome sexual conduct (i.e. quid pro quo);
2. Unwelcome conduct a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity; or
3. Sexual Assault (as defined in the Clery Act), or Dating Violence, Domestic Violence or Stalking as defined in the Violence Against Women Act (VAWA) (collectively referred to as "Sexual Violence")*:
 - **Sexual Assault:** As defined in 20 U.S.C. 1092(f)(6)(A)(v), means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
 - **Dating Violence:** As defined in 34 U.S.C. 12291(a)(10), means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and, the frequency of interaction between the persons involved in the relationship.
 - **Domestic Violence:** As defined in 34 U.S.C. 12291(a)(8), includes felony or misdemeanor crimes 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 receiving grant monies, or 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.



- **Stalking:** As defined in 34 U.S.C. 12291(a)(30), means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

* Please note: In accordance with the Violence Against Women Reauthorization Act of 2013 (“VAWA”), state definitions for Sexual Assault, Dating Violence, Domestic Violence, Stalking and Consent are contained in the University’s [Annual Safety and Security Report \(“ASR”\)](#). VAWA crimes are reported in the ASR based on the definitions above.

Complainant: An individual who is alleged to be the victim of conduct that could constitute Sexual Harassment, regardless of whether a Formal Complaint has been filed. A Complainant must be the alleged victim unless a parent or legal guardian has a legal right to act on the alleged victim’s behalf.

Respondent: An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

Parties: include the Complainant(s) and Respondent(s) collectively.

Advisor: An individual chosen by a party to accompany the party to meetings related to the resolution process, to advise the party on that process and to conduct cross-examination for the party at any hearing, if any. If a party does not have an Advisor at the hearing portion of the Grievance Process, the University will appoint an advisor it reasonably believes, but does not guarantee, is capable of providing knowledgeable advice.

Formal Complaint: A document (hardcopy or electronic) filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the University investigate. A Formal Complaint must be signed (physical or digital) by the Complainant, the Title IX Coordinator, or otherwise indicate that the Complainant is the person filing the Formal Complaint. At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in the University’s education Program or Activity with which the Formal Complaint is filed.

Program or Activity: On or off campus locations, including housing, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurred.

Mandatory Reporter: Designated University employees who must share knowledge, notice and/or reports of Sexual Harassment, discrimination and/or retaliation with the Title IX Coordinator.

Discretionary Reporter: Designated University employees who may, with the Complainant’s consent, report instances to the Title IX Coordinator.

Procedure for Reporting

If you believe that you have experienced or witnessed Sexual Harassment, discrimination or retaliation, the University encourages you to notify the Title IX Coordinator as soon as possible after the incident. A



report may be made to either or both the police and the Title IX Coordinator. The criminal process is separate from the University's Title IX Grievance Process.

In order to make informed choices, it is important to be aware of confidentiality and reporting requirements when consulting University resources. Officials With Authority (OWAs), such as Deans and Directors, are designated mandatory reporters that will notify the Title IX Coordinator of any complaints received relating to students and directly to Human Resources if relating to other employees. Students are free to ask if a staff member is an OWA before disclosing information.

The University will keep confidential the identity of the Complainant, Respondent, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out the Grievance Process.

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide Remedies may be more limited or impossible. Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

Supportive Measures

The Title IX Coordinator will provide Supportive Measures as necessary. Supportive Measures are individualized services reasonably available to ensure equal educational access, protect safety or deter prohibited conduct. Supportive Measures are available, as appropriate, to either or both the Complainant and Respondent and are non-punitive, non-disciplinary and not unreasonably burdensome to the other party. Examples include counseling, extensions of time or other course-related adjustments, modifications to work or class schedules, campus escort services, restrictions on contact between the Parties, leave of absence, increased security and monitoring of certain areas on campus, and other similar accommodation.

Supportive Measures are individualized and appropriate based on the information gathered by the Title IX Coordinator. The Supportive Measures needed by the Complainant and/or Respondent may change over time, and the Title IX Coordinator will communicate with each party to ensure that any Supportive Measures are necessary and effective based on evolving needs.

Once the Title IX Coordinator receives a report, the Title IX Coordinator will promptly contact the Complainant confidentially to discuss the availability of Supportive Measures (available with or without filing a Formal Complaint) and explain the process for filing a Formal Complaint and provide a copy of this policy. The Title IX Coordinator will consider the Complainant's wishes with respect to Supportive Measures.

The University will maintain the privacy of the Supportive Measures, provided that privacy does not impair the University's ability to provide the Supportive Measures.



Dismissal of a Formal Complaint

Dismissal of a Formal Complaint may occur under several circumstances. The University must dismiss a Formal Complaint if the allegations do not meet the definition of Sexual Harassment, did not occur in the University's education Program or Activity, or did not occur against a person in the United States.

The University may dismiss a Formal Complaint if the Complainant informs the Title IX Coordinator, in writing, that he, she, or they withdraw the Formal Complaint or allegations therein; the Respondent is no longer enrolled or employed by the University ; or if specific circumstances prevent the University from gathering sufficient evidence to reach a determination.

If a Formal Complaint is dismissed, the Parties will be provided written notice of the dismissal outlining the reason(s) for dismissal. A dismissal does not preclude action by the University under University's Student Code of Conduct or Employee Handbook.

Grievance Process

The University utilizes a prompt, equitable and impartial Grievance Process to evaluate Formal Complaints. Title IX personnel (Title IX Coordinator/Deputy, Investigators, Decision-Makers, individuals who facilitate Informal Resolution process) will be free from conflicts of interest or bias for or against Complainants or Respondents. Title IX personnel will objectively evaluate all relevant evidence and avoid credibility determinations based on a person's status as a Complainant, Respondent or witness.

Both Parties will receive equal opportunity to provide information, witness statements, evidence, and other information that may be necessary to fully evaluate the alleged offense. Both Parties will be afforded equitable rights and access during the Grievance Process. The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Grievance Process.

Generally, the Grievance Process consists of a Formal Complaint, investigation, Live Hearing, determination, Disciplinary Actions, Remedies and appeal (if applicable). The Grievance Process, barring extenuating circumstance, will conclude within 90 days from the date a Formal Complaint is filed.

Advisor

A party may be accompanied by an Advisor of their choice during the Grievance Process. The Parties may choose Advisors from inside or outside the University community. If the Complainant or Respondent does not have an Advisor present at the Live Hearing, the University will select and provide an Advisor, without fee or charge, to conduct cross-examination of witnesses on behalf of that party. The University will provide someone it reasonably believes, but does not guarantee, is capable of providing knowledgeable advice. A party may reject a University appointed Advisor and choose their own Advisor, but they may not proceed without an Advisor. The Complainant and Respondent may not conduct cross-examination.



Choosing an Advisor who is a witness in the Grievance Process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Decision-Maker.

The Parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the Grievance Process. Advisors are expected to advise without disrupting proceedings. For example, advisors should not address University officials in a meeting or interview unless invited to. An Advisor may not make a presentation during any meeting or proceeding and may not speak on behalf of the party to the investigation or other Decision-Maker except during a Live Hearing, during cross-examination. If an Advisor is disruptive or otherwise fails to respect the limits of the Advisor role, the meeting or interview may be ended.

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third Parties, disclosed publicly, or used for purposes not explicitly authorized by the University. The University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

Investigation of Formal Complaints

The University will investigate Sexual Harassment allegations in a Formal Complaint filed by a Complainant or signed by the Title IX Coordinator. The Title IX Coordinator will respect the Complainant's wishes as to whether the University investigates an allegation of Sexual Harassment, unless the Title IX Coordinator determines that not investigating would be deliberately indifferent or harmful to the University community. The University may consolidate Formal Complaints where the allegations arise out of the same facts.

Upon receipt of a Formal Complaint, written notice will be sent to the Parties. The Notice of Investigation will include: details of the allegations (including identities of the Parties involved, specific section of the policy alleged to have been violated, the conduct that would be considered Sexual Harassment, the date of the incident(s) and the location of the incident(s)); a statement that the Respondent is presumed to be not responsible for the alleged conduct until a determination is made according to the University's Grievance Process; a statement that the Parties may have an Advisor of their choice; and a reminder of the expectation of truthfulness including consequences for submitting false information. The Parties will also be provided with separate written notice of any investigative interview, meeting or hearing. Interview/meeting notices will include the date, time, location, participants and purpose of the investigative interview or meeting.

Formal Complaints involving employees will also be referred to Human Resources and simultaneously evaluated under employee conduct policies and procedures.

During the investigation, the Title IX Coordinator or his/her designee ("Investigator") will conduct interviews and gather evidence. No unauthorized audio or video recording of any kind is permitted during investigation interviews/meetings. The Parties will be provided an equal opportunity to present fact and witnesses or other evidence. The Parties (and their Advisors) will be provided with evidence directly related to the allegations, in electronic format or hardcopy, with at least 10 days for the Parties



to inspect, review, and respond to the evidence. The Investigator will consider the responses received from the Parties before issuing the investigative report.

Once the investigation has concluded, the Investigator will draft an investigative report (hardcopy or electronic) that fairly summarizes relevant evidence. The investigative report will be sent to the Parties (and their Advisors) at least 10 days prior to a Live Hearing. The Parties may provide a written response to the investigative report.

Informal Resolution

If the Complainant and Respondent voluntarily consent in writing, Formal Complaints can be resolved through Informal Resolution, such as mediation. The Title IX Coordinator will coordinate an appropriate Informal Resolution process depending on the nature of the allegations, the Parties involved, and the overall circumstances. Informal Resolution will be conducted by a facilitator, who may or may not be the Title IX Coordinator. It is not necessary to pursue Informal Resolution first in order to pursue the University's Grievance Process. At any time prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and resume the Grievance Process. Informal Resolution is unavailable to resolve allegations that an employee sexually harassed a student.

Live Hearing

If a Formal Complaint is not or cannot be resolved through Informal Resolution, the University will conduct a Live Hearing. Live Hearings are facilitated by designated Decision-Maker, separate from the Title IX Coordinator or Investigator. The Decision Maker will be selected by the Title IX Coordinator.

Live Hearings will be conducted directly, orally, and in real time. The Decision-Maker will permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Questions are asked only by Advisors and not by parties. Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-Maker must first determine whether the question is relevant and explain to the party's Advisor asking cross-examination questions any decision to exclude a question as not relevant.

Rape shield protections are applied to Complainants, deeming irrelevant questions and evidence about a Complainant's prior sexual behavior unless offered to prove that someone other than the Respondent committed the alleged Sexual Harassment or offered to prove consent.

If a party or witness does not submit to cross-examination at the Live Hearing, the Decision-Maker will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Decision-Maker will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the Live Hearing or refusal to answer cross-examination or other questions.

At the request of either party, the University will provide for the entire Live Hearing (including cross-examination) to occur with the Parties located in separate rooms with technology enabling the Parties to see and hear each other. Live Hearings may be conducted with all Parties physically present in



the same geographic location or, at the University's discretion, any or all Parties, witnesses, and other participants may appear at the Live Hearing virtually. An audio or audiovisual recording, or transcript, of any Live Hearing will be created and maintained by the University for seven (7) years.

During the Grievance Process, the University will not use, rely on or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. The University will not access or use a party's medical, psychological, and similar treatment records unless the party provides voluntary, written consent.

Standard of Evidence

For all Formal Complaints of Sexual Harassment (including where employees are Respondents), the University utilizes the preponderance of the evidence standard, which means "more likely than not."

Interim Actions

Prior to or during an investigation, the University will provide interim measures, as necessary. Interim measures are individualized services offered, as appropriate, to either or both the reporting and responding parties involved in an alleged incident of Sexual Misconduct and may include: counseling, extensions of time or other course-related adjustments, modifications to work or class schedules, campus escort services, restrictions on contact between the parties, leave of absence, increased security and monitoring of certain areas on campus, and other similar accommodation.

Interim measures should be individualized and appropriate based on the information gathered by the Title IX Coordinator, making every effort to avoid depriving any student of her or his education. The measures needed by each student may change over time, and the Title IX Coordinator should communicate with each student throughout the investigation to ensure that any interim measures are necessary and effective based on the students' evolving needs.

Disciplinary Actions and Remedies

Disciplinary Actions against the Respondent will not be imposed before completion of the University's Grievance Process. Following a determination of responsibility, appropriate corrective action will be taken, and the University will take steps to prevent recurrence. Disciplinary Actions taken will be determined on a case-by-case basis. Factors considered when determining Disciplinary Action may include but are not limited to: Nature, severity of, and circumstances surrounding the violations(s); Respondent's disciplinary history; Previous allegations or allegations involving similar conduct; Need for disciplinary action to bring an end/prevent future recurrence of the violation; Need for disciplinary action to remedy the effects on the Complainant and the University community; Impact on the parties; Any other information deemed relevant by the Decision-Maker.

Any employee determined by the University to be responsible for an act of Sexual Harassment will be subject to appropriate Disciplinary Action, up to and including termination. Employees are also subject to processes and discipline determined by the Human Resources Department. The HR process is separate and apart from the Title IX process and not constrained by the outcome of the Title IX process.



Disciplinary Action for student-related claims may include, but are not limited to, additional training, a restriction on contact, warning, suspension, or termination.

Failure to abide by imposed Disciplinary Actions (whether by refusal, neglect or any other reason), may result in additional Disciplinary Action, including suspension or termination.

Remedies are provided to a Complainant whenever a Respondent is found responsible. Remedies are implemented by the Title IX Coordinator and may be disciplinary and punitive. Student Remedies are designed to maintain the Complainant's equal access to education. Remedies will be determined on a case-by-case basis and may include supportive measures.

Individuals who make a materially false statement in bad faith in the course of a Title IX Grievance Process will be subject to the University's Student Code of Conduct and/or Employee Handbook as it relates to Standard Code of Conduct.

Written Determination

The Decision-Maker will issue a Written Determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, a description of the procedure from Formal Complaint through the Live Hearing, Disciplinary Actions imposed on the Respondent and whether Remedies will be provided to the Complainant. The determination will be sent simultaneously to the Parties along with information on how to file an appeal.

Appeal

Both Parties have the right to appeal a determination regarding responsibility, the University's dismissal of a Formal Complaint or any allegations therein if: (1) procedural irregularity affected the outcome of the matter; (2) there is newly discovered evidence that could affect the outcome of the matter; and/or (3) Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.

An appeal must be submitted in writing to the Title IX Coordinator within 15 days of the delivery of the Written Determination.

Retaliation Prohibited

Retaliation (including intimidation, threats, coercion or discrimination) against an individual for raising an allegation of Sexual Harassment, for cooperating in the Grievance Process is prohibited.

If you believe you have been retaliated against, you should notify the Title IX Coordinator.

Training

The University ensures that its Title IX personnel have adequate training. The Title IX Coordinator and Investigators are trained on the definition of Sexual Harassment, the scope of the University's Education Program or Activity, how to conduct an investigation, the University's Grievance Process (including Live Hearings, appeals, and Informal Resolution processes, as applicable) and how to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Decision-Makers are trained



on the definition of Sexual Harassment, the Live Hearing process, technology to be used in Live Hearings, and issues of relevance (including how to apply the rape shield protections provided for Complainants). Informal Resolution facilitators are trained on the Informal Resolution process.

Materials used to train Title IX personnel are posted on the University's website at <http://westcliff.edu/titleix>.

Bias/Conflict of Interest

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Executive Director of Operations at (949) 825-5999. Concerns of bias or potential conflict of interest by any other Title IX personnel should be raised with the Title IX Coordinator.

Clery Act Reporting

University administrators will issue timely warnings for incidents reported that pose a substantial threat of bodily harm or danger to members of the campus community. The University will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The University reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, or a change in student status.

Personally identifiable information for victims of Sexual Assault, Dating Violence, Domestic Violence and Stalking will not be included in any publicly available recordkeeping, including Clery Act Reporting and disclosures such as the ASR. The Title IX Coordinator will report any Clery Act violations to ensure that it is accurately recorded in the ASR. When applicable, local authorities will be notified as well. Each October, the ASR for the preceding three years will be made available to students and employees.

Emergency Removal

The University can remove a Respondent entirely or partially from the Education Program or Activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical or safety of any student or other individual justifies removal. The risk analysis is performed by the Title IX Coordinator in conjunction with the Executive Director of Operations and/or Human Resources.

In cases in which an emergency removal is imposed, the Respondent will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived.



The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator and/or HR, these actions could include, but are not limited to: temporarily re-assigning an employee, restricting a student's or employee's access to the campus, allowing a student to withdraw or take grades of incomplete without financial penalty, and authorizing an administrative leave.

Additional Information

Students and employees may contact the Title IX Coordinator with any questions related to this policy. In addition, the U.S. Department of Education Office for Civil Rights ("OCR") investigates complaints of unlawful harassment of students in educational programs or activities. This agency may serve as a neutral fact finder and will attempt to facilitate the voluntary resolution of disputes with the Parties. For more information, visit the OCR website at <http://www.hhs.gov/ocr/>. To the extent that an employee or contract worker is not satisfied with the University's handling of a complaint, he or she may also contact the appropriate state or federal enforcement agency for legal relief.

Recordkeeping and Privacy

The University's records of investigations and resolutions are maintained for seven years. The University shall maintain records of Title IX procedures as required by law, including records of:

- Sexual Harassment investigations, including any determination regarding responsibility and any audio or audiovisual recording or transcript, any Disciplinary Actions imposed on the Respondent, and any Remedies provided to the Complainant designed to restore or preserve equal access to the education Program or Activity;
- Any appeal and the result therefrom;
- Any informal resolution; and
- All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

The University will create, and maintain records of any actions (including any Supportive Measures) taken in response to a report or Formal Complaint of Sexual Harassment. In each instance, the University will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the education Program or Activity. If the University does not provide a Complainant with Supportive Measures, the University will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Information is shared internally between administrators who need to know in order to complete their job duties. When information must be shared to permit the investigation to move forward, the Parties will be informed. Privacy of the records specific to the investigation is maintained in accordance with



state law and the federal FERPA statute. Irrespective of state law or public records access provisions, information about Complainants is maintained privately in accordance with Title IX and FERPA.