



LIFE CHIROPRACTIC  
COLLEGE WEST

## Life Chiropractic College West Title IX Policy

### Discrimination, Sexual Misconduct, Harassment, Dating, Domestic Violence and Stalking

***“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.” 20 U.S.C. § 1681***

### INTRODUCTION

Title IX of the Education Amendments of 1972 (Title IX) is a federal law that prohibits discrimination on the basis of sex in educational programs and activities that receive federal financial assistance. Life Chiropractic College West (Life West) prohibits discrimination on the basis of sex in all of its programs and activities, including academic programs, admissions, grading, employment, athletics, and certain extracurricular activities. This prohibition includes gender-based harassment, sexual violence, and other sexual misconduct. In addition, Title IX requires that education institutions promptly respond to a complaint of sexual harassment and discrimination based on sex. The allegations are to be resolved under a grievance process that provides due process to all parties.

### SCOPE OF POLICY

Life West is committed to fostering and maintaining a diverse and inclusive community and does not tolerate sexual harassment or discrimination based on sex, gender, gender identity, and sexual orientation. This policy applies to Life West’s students, staff, faculty, visitors, vendors, independent contractors, and those who participate in Life West’s programs and activities. If there are complaints against College affiliates, the matter will be handled in accordance with existing agreements. Life West will provide resource options for victims of sexual harassment. The College will consider any requests for confidentiality within the context of the College’s obligation to provide a safe, nondiscriminatory environment for all community members. Pursuant to the requirements of Title IX, Life West has a responsibility to investigate (apart from any separate criminal investigation by law enforcement) and address sexual violence, even in the absence of a complaint by the alleged victim.

Any questions regarding Title IX or this policy may be referred to the Life West Title IX Coordinator, Tarsha Addison, at (510) 780-4541 or [taddison@lifewest.edu](mailto:taddison@lifewest.edu); the Deputy Title IX Coordinator, David Straub, (510) 780-2590 or [dstraub@lifewest.edu](mailto:dstraub@lifewest.edu); or the Executive Vice President, Dr. Anatole Bogatski, at (510) 861-9820 or [abogatski@lifewest.edu](mailto:abogatski@lifewest.edu).

## **OBLIGATION TO REPORT**

In accordance with mandatory reporting requirements, a Life West student, faculty, or staff member or a covered third party who has reasonable cause to believe that there has been a violation of this policy should immediately file a complaint with Life West Campus Safety, the Title IX Coordinator, or the Deputy Title IX Coordinator.

If you are the victim of sexual violence, your personal safety is most important. You are encouraged to go to a safe place if you are somewhere you do not feel comfortable. If or when you are comfortable, share what has occurred with someone you trust. Sharing as many details as you remember, along with any physical evidence, will help should you decide to file a complaint with the College and/or the police.

## **ANONYMOUS REPORTING, CAMPUS AND COMMUNITY RESOURCES**

Students wishing to seek confidential assistance may do so by speaking with professionals who have the duty to maintain confidentiality except in extreme cases of immediacy of threat or abuse of a minor. Confidential resources include on- and off-campus mental health counselors, health service providers, local rape crisis counselors, domestic violence resources, and members of the clergy and chaplains. Life West's on-campus Academic Counselor, Lori Pino, may be contacted at:

Office of Academic Affairs, Room 105B  
Life Chiropractic College West  
25001 Industrial Blvd.  
Hayward, CA 94545  
[lpino@lifewest.edu](mailto:lpino@lifewest.edu)  
(510) 780-4500 ext. 2061

There are a number of campus and community resources that are available to assist students or employees with sexual misconduct, harassment, and discrimination issues. A list of resources will be provided to all parties upon receipt of a complaint.

## **CAMPUS SAFETY SERVICES**

You should contact the Campus Facilities Department or the on-site Security Officer to report an emergency or crime or to request assistance. Their services are available 24 hours a day, 365 days a year by calling (510) 456-6239.

## **ADVISORS**

The Complainant (the party who files a complaint) and the Respondent (the party accused of engaging in sexual harassment) have the right to be assisted by an advisor of their choice. Life West will provide a list of Advisors for parties to use if they prefer. Both parties have the right to have a private attorney serve as their Advisor at their own expense. If one party has an Advisor and the other party does not have an Advisor, Life West will assign an Advisor.

The College has the right to determine what protocol will be followed by an Advisor. In general:

- Advisors serve in an advisory capacity and may be present at all meetings, interviews, and proceedings with a party.
- The Advisor may not be a fact witness or have a conflict.
- The Advisor may provide advice to a party and cross-examine opposing parties and witnesses during a hearing. The Advisor is not permitted to make statements, present witnesses, or participate in any other manner.

An Advisor provided by the College will be trained on College policies, procedures, and resources. Any person who serves as an Advisor should plan to make themselves available for meetings throughout the investigative or disciplinary process.

## **GENERAL INFORMATION: ADMINISTRATION OF TITLE IX**

### **Sanctions/Discipline for Policy Violations**

The imposition of sanctions/discipline will be based on the facts of each case and will be designed to eliminate sexual harassment and prevent reoccurrence of such conduct. Any determination for sanctions will be rooted in the College's educational mission, institutional values, and Title IX obligations.

While investigation records are private, sanctions become part of a student's records or an employee's personnel file

Should a formal complaint go to a hearing, the Hearing Panel will determine the appropriate sanction or disciplinary action. The Title IX Coordinator/Deputy Coordinator, Hearing Panel, or Hearing Officer may consult with Human Resources and the appropriate Vice President/Dean (in the case of an employee respondent) to discuss appropriate sanctions.

Any investigation, hearing, review, or appeal procedure will use a preponderance of the evidence standard of proof (i.e., more likely than not).

Sanctions/discipline for a student's violation of this policy can be found in the *Student Handbook* and other Life West policies. Sanctions/discipline include, but are not limited to, one or more of the following:

- a formal written warning;
- a non-academic disciplinary probation;
- a mandated counseling assessment;
- denial of the right to hold an office in a student organization;
- restrictions on participation in student activities;
- restrictions on community service;
- campus restrictions,
- notation of non-academic conduct issue on transcript;
- non-academic suspension or dismissal from the College; and
- other educational sanctions.

Sanctions/discipline for a violation of this policy by an employee can be found in the *Employee Handbook* and other Life West policies. Sanctions/discipline includes, but is not limited to, one or more of the following:

- leave with pay;
- leave without pay;
- termination;
- change in job responsibilities or duties;
- relocation of assignment;
- mandated counseling;
- anger management training; and
- other mandated training such as sexual harassment training.

Imposition of sanctions/discipline for a student or employee is based on the following factors:

- the nature of the conduct at issue;
- impact of the conduct on the Complainant;
- impact of the conduct on the College community;
- prior misconduct by the Respondent, including relevant prior discipline history at the College or elsewhere, and prior criminal convictions;
- how the College has previously sanctioned similar conduct;
- whether the Respondent has accepted responsibility for the conduct;
- maintenance of a safe and respectful learning, living, and working environment;
- protection of the College community; and
- other mitigating, compelling, or aggravating circumstances.

If the Respondent is not a Life West student, faculty, or staff member subject to the College's direct control, the College will take the necessary measures it deems appropriate to remedy the matter. This may include barring the offender from College property and/or filing a complaint with law enforcement authorities.

## **Conflict of Interest/Bias**

Life West will take appropriate steps to poll Investigators and Decision Makers for conflicts of interest and bias before initiating the grievance procedure outlined in this policy. If a Complainant or Respondent believes there is a conflict of interest or bias in any step of the complaint, investigation, or adjudication process with officials involved in the process (the Title IX Coordinator for employees, Deputy Title IX Coordinator for students, assigned Title IX Investigators, Hearing Officer, Hearing Panel, or Appellate Decider), written notice describing the potential conflict or bias and its impact must be submitted as soon as a conflict is recognized.

The Title IX Coordinator for staff, the Deputy Title IX Coordinator for students, an Investigator; an administrator for hearings or appeals, or other College officials involved in the process may also request to recuse oneself due to a conflict of interest or bias.

The conflict report shall be submitted to the Title IX Coordinator who will assemble a review panel. If the Title IX Coordinator is named as a party in the conflict or bias report, then the Deputy Title IX Coordinator for students will assemble the panel.

A conflict review panel of at least three members consisting of at least one College administrator and one Title IX official not involved in the complaint will review the report and determine if conflict or bias is substantial enough to unfairly favor one party. The review may include interviews.

If there is a substantial bias or conflict, an alternative official will be assigned by the Title IX Coordinator/Deputy Coordinator. If there is insufficient evidence for significant conflict or bias, the parties will be notified.

The determination will be shared with the Complainant and Respondent in writing within ten (10) days of receipt.

## **Informal Resolution**

The purpose of an informal resolution is to resolve and dispose of a charge by mutual consent of the parties. Informal resolution is not available for matters where an employee is the Respondent.

After a formal complaint has been filed, Life West may offer the parties an informal process that resolves the formal complaint without an investigation or formal hearing. Both parties may voluntarily agree to attempt informal resolution at any time with or without an Advisor. Informal resolution may include mediation, restorative justice, or any other process mutually agreed to by the Complainant, Respondent, and College.

Either party may withdraw from the informal resolution process at any time and proceed with the formal grievance procedure under this policy.

If the parties elect to proceed with the informal resolution process, the College will obtain their consent and provide them with a written notice disclosing the allegations in the formal complaint, describing the informal resolution process, stating the range of sanctions and the right to withdraw and resume the formal grievance process at any time prior to entering into a binding written agreement, and stating that any records maintained or shared by the parties during informal resolution may be used in the formal grievance process.

The Facilitator in charge of handling informal resolutions will work with both parties to find agreed upon outcomes to adequately address the harm to the Complainant, educate the Respondent, and prevent the recurrence of future violations. This could include actions to address the impact of a policy violation on others, counseling, awareness training, or programs.

The Facilitator in charge of handling informal resolutions will record the outcome of the informal process and simultaneously notify both parties in writing within five (5) business days of the outcome.

### **Notice of Outcome and Results**

Whenever a complaint is resolved at any level in the process provided under this policy, the College will inform the Complainant in writing regarding whether or not it found that a violation of policy occurred, any individual remedies offered or provided to the Complainant, any sanctions imposed against the Respondent that directly relate to the Complainant, other steps the College has taken to eliminate and prevent the recurrence of sexual harassment if any is found to exist by the College, and the parties' rights to file an appeal. The Respondent will not be notified of any individual remedies offered or provided to the Complainant.

In cases that involve a Complaint of dating violence, domestic violence, stalking, sexual assault, or a forcible sex offense (rape, sodomy, sexual assault with an object, fondling) or non-forcible sex offense (incest, statutory rape), the College will inform the Complainant and Respondent of the results of the proceeding, any sanctions that are imposed on the Respondent, and the rationale for the results and the sanctions/discipline consistent with its obligations under the Clery Act and the Violence Against Women Act of 2013. All notices will be simultaneously provided to the Complainant and Respondent within the time frame specified in this policy.

### **Training**

Title IX Coordinators, Deputy Coordinators, Investigators, Decision Makers, and Informal Resolution Facilitators receive training on various relevant aspects of the College's Title IX policy and grievance process, including:

- definitions of sexual harassment and consent;
- the scope of Life West's educational programs and activities;
- how to conduct fair and impartial investigations, hearings, appeals, and informal resolution processes under this policy (as applicable);
- how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias;

- how various institutional actors must be free of “sex stereotypes” and promote “impartial investigations”;
- how Decision Makers must include relevant technology to be used at any live hearing;
- the burden of proof used to determine responsibility;
- relevant evidence; and
- admissible and inadmissible evidence.

Training record materials will be available on the College’s public website.

### **Timelines**

The College believes that timing of processes should be balanced with thoroughness to ensure fairness and promptness.

The College lays out specific timelines within its procedures and will make reasonable efforts to follow these established timelines. The timelines specified may be delayed due to a number of factors, including the Academic Calendar (Fall/Winter/Spring break, College holidays) and the availability of parties, e.g., medical leave. In instances where a Complainant or Respondent is unwilling to meet within the scheduled timelines, procedures will proceed accordingly with the information available at that time. The Title IX Coordinator/Deputy Coordinator is responsible for updating the parties with regard to timing issues including delays.

The College may extend the time frames provided in this policy for good cause with written notice to the Complainant and Respondent, explaining the new timeline and the reason for the delay.

Any time period provided under this policy will be calculated using calendar days as opposed to business days. When the last day of the period falls on a weekend, official College holiday, or holiday break, then the next regular calendar day will be counted.

### **Records**

Records of reports, formal complaints, investigations, hearings, disciplinary sanctions, remedies, appeals, or any informal resolution and all materials used to train Investigators, Coordinators, Hearing Panel members, etc. covered by this policy will be retained for seven (7) years. Conduct records will be kept in accordance with the College Record Retention Policy for student records and employment records.

## **PROCEDURES FOR RECEIVING, INVESTIGATING, AND ADJUDICATING COMPLAINTS**

Procedures for receiving, investigating, and adjudicating formal complaints related to sexual harassment are as follows:

## **Notice of Sexual Harassment to the College**

Notice of sexual harassment typically occurs in one of the following ways:

- The Title IX Coordinator/Deputy Coordinator for students directly receives notice in the form of a complaint from a Complainant or Third Party.
- A Complainant files a formal complaint with the Title IX Coordinator, Deputy Title IX Coordinator, or a responsible employee using the formal complaint form available at [www.lifewest.edu](http://www.lifewest.edu) under the Title IX web page under Human Resources or Student Life. A detailed statement of facts is not required to make a formal complaint.
- A responsible employee receives a report or formal complaint or otherwise becomes aware of prohibited conduct covered under this policy and immediately refers the matter to the Title IX Coordinator/Deputy Coordinator for students. This includes Student Conduct Administrators who receive notice of a report or formal complaint. The responsible employee must communicate in writing all relevant details about the prohibited conduct shared by the party in writing to the Title IX Coordinator/Deputy Coordinator. This includes the names of the alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time, and specific location of the alleged incident.
- Once a responsible employee of the College becomes aware of a report or formal complaint, the complaint will be submitted to the Title IX Coordinator/Deputy Coordinator for students after the need for immediate health or safety is assessed.

### **Conference with Complainant**

The Title IX Coordinator/Deputy Coordinator for students or designee, such as the Student Life Administrator or trained Title IX Investigator, will take the following steps with the Complainant:

- Contact the Complainant identified in the report or formal complaint to confirm receipt. If the reporter is a third party, the third party will also be notified.
- Request to meet with the Complainant to discuss the report or formal complaint in detail and examine any evidence provided.
- Discuss supportive measures and the availability of measures irrespective of whether the Complainant chooses to file a formal complaint. Consideration will be given to the Complainant's wishes with respect to supportive measures.
- Explain the process for filing and/or processing a formal complaint, the investigation, hearing, and appeal process as well as potential outcomes. No outcome will be promised or predicted. Care will be taken so as not to coerce a Complainant into filing a formal complaint.
- Explain that a Respondent is presumed not responsible for the alleged conduct until a determination is made at the conclusion of the grievance process.
- Provide a range of possible sanctions should the end of the process result in a finding of responsibility.



- Share the option to request an Informal Administrative Resolution in lieu of a full investigation and formal hearing, if applicable.
- Share a copy of the relevant policy and written explanation of rights and resources, including community resources.
- If supportive measures are not provided to the Complainant, document the reasons.

### **Preliminary Evaluation**

Subsequent to the preliminary conference, the Title IX Coordinator/Deputy Coordinator will evaluate the report or formal complaint and information from the preliminary conference to determine whether the alleged conduct is covered by this policy. Should the Complainant not attend the preliminary conference, only the information that is available will be considered for the evaluation. This evaluation will include:

- an examination of the report or formal complaint as received (either in writing, in person, over the phone, or other communication);
- evidence provided and other information related to the parties involved such as review of related prior complaints, disciplinary action, or sanctions. Additionally, a review of Title IX records will be included to see if the Complainant, Respondent, or witnesses have been involved in other incidents;
- assessment of immediate safety needs of the Complainant and the need for the Respondent's interim/emergency removal from campus, and/or timely warning/emergency notification. Public Safety will be updated if timely warning/emergency notification is necessary;
- evaluation of possible or requested supportive measures such as reaching out to appropriate campus resources (Registrar, housing officers, public safety, etc.); and
- a determination if the complaint is covered by this policy or another policy.

### **Determination That Alleged Conduct is NOT Covered by This Policy**

At any point after a report or formal complaint is submitted or anytime during the formal complaint and grievance process (investigation, hearing, appeal), the Title IX Coordinator/Deputy Coordinator for students may determine that behavior or an incident in a report or formal complaint is not covered by this policy and dismissal of specific charge(s) is required if any of the following occur:

- The facts and evidence presented in the report or formal complaint, if assumed true, fail to meet the definition of prohibited conduct under this policy.
- The conduct alleged in the report or formal complaint did not occur within the College's educational programs or activities.
- The conduct alleged in the report or complaint did not occur in the United States.

Whenever a formal complaint is dismissed, the College will notify the Complainant and Respondent in writing of the decision, reasons supporting the action, and right to appeal within five (5) business days of the decision. Should other potential policy violations apply, the

matter may be referred to the appropriate College official (Director of Human Resources and Campus Culture) for handling after the conclusion of any appeal.

### **Determination That Allegations are Covered by This Policy**

If the allegations in a report or formal complaint support a possible policy violation, the Title IX Coordinator/Deputy Coordinator for students or designee will notify the Complainant in writing within five (5) business days of the following:

- The preliminary review of the complaint confirms that adequate grounds exist to initiate the grievance procedures provided under this policy.
- The Complainant has the right to file a formal complaint or proceed with an investigation and a formal hearing to determine responsibility on the part of the Respondent.
- The Complainant has the right to contact law enforcement with assistance from the College.
- The Complainant will be given notice of support measures in place, if any, and the option to request support measures.
- The Complainant will be advised of the right to have an Advisor of choice in the process.
- The Complainant will be advised that both parties have the right to a fair and impartial investigation, hearing, and appeal.
- The Complainant will be advised of the right to receive available remedies in the event that the Respondent is determined to have violated this policy.

There is no time limit by which a Complainant must file a formal complaint. However, a period of time will be presented, after which if no formal complaint has been filed, the report will be considered inactive until such a time as a formal complaint is filed.

### **FORMAL COMPLAINT**

Only the Complainant or Title IX Coordinator may file a formal complaint. A third party, a friend, a parent, or other party cannot file a formal complaint on behalf of a Complainant.

Even if a formal complaint is not filed, the College may still take steps to limit the effects of the alleged misconduct and prevent its recurrence without initiating a formal action against the alleged perpetrator or revealing the identity of the student. This may include increased monitoring, security, or additional training or communication efforts for students or employees.

### **Formal Complaint Filed by Complainant**

A formal complaint is a physical or electronic document signed by a Complainant or the Title IX Coordinator, specifically requesting an investigation of the allegations of sexual harassment. For consistency, the College maintains a complaint form, but use of other written

communication requesting an investigation will suffice. This can include an email from a College email account, for example.

### **Formal Complaint Filed by Title IX Coordinator or Deputy Title IX Coordinator**

In certain circumstances, the Title IX Coordinator may file a formal complaint on behalf of a Complainant without their participation if it is reasonable under the facts and circumstances. Before doing so, the Title IX Coordinator/Deputy Coordinator for students will consult with the Complainant. In addition to the Complainant's wishes, the Title IX Coordinator will consider a range of factors including, but not limited to, the following:

- Whether there have been multiple complaints about the same alleged perpetrator.
- The legal obligations of the College.
- The increased risk that the Respondent will commit additional acts of prohibited conduct or other violence.
- Whether the Respondent has a history of arrests or records from a prior institution indicating a history of violence.
- Whether the Respondent threatened further prohibited conduct or other violence against the reporting party or others.
- Whether the prohibited conduct was committed by multiple perpetrators.
- Whether the prohibited conduct was perpetrated with a weapon.
- Whether the party receiving the prohibited behavior is a minor.
- Whether the College possesses other means to obtain relevant evidence of the incident (e.g., security cameras, personnel, physical evidence).
- Whether the party receiving the alleged prohibited behavior's report reveals a pattern (e.g., illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead the Title IX Coordinator to file a formal complaint. If none of these factors are present, a Complaint will not likely be filed.

### **Combining Complaints**

The Title IX Coordinator/Deputy Coordinator may consolidate two or more formal complaints when there are common Complainants or Respondents involved or when the sexual harassment arises out of the same facts or circumstances.

### **Dismissal of Complaints Prior to Adjudication**

At any point in the process, the College may dismiss a formal complaint at any time if

- the Complainant would like to withdraw the complaint;
- the complaint does not fall under the jurisdiction under Title IX;
- the Respondent is no longer enrolled or employed by the College; or
- specific circumstances prevent the College from gathering evidence sufficient to reach a determination.

## **Notice of Charges**

Once a formal complaint is filed, the Title IX Coordinator/Deputy Coordinator for students or designee will notify the Complainant and Respondent in writing within five (5) business days of the following:

- The specific policy(s) violation(s) being charged, the identity of the parties, the alleged conduct, and the date and location of the incident;
- The informal resolution options, if available;
- The formal resolution process (investigation, hearing, and appeal);
- The range of possible sanctions should the end of the process result in a determination of responsibility;
- A written explanation of rights and resources, including right to an Advisor of choice including an attorney (at their own expense) and the role of the Advisor;
- Notice of supportive measures in place that affect the Respondent, if any, and the option for the Respondent to request supportive measures;
- A reminder to parties that a Respondent is presumed not responsible and that a determination of responsibility will not be made until the conclusion of the process;
- That the parties have the right to inspect and review evidence; and
- An explanation of non-retaliation policy and prohibitions on parties making false statements.

The communication with the Respondent will include a request for a preliminary conference to review the charges and submit information related to the complaint. The date, time, location, and purpose of the meeting will be shared, and sufficient time (no less than five (5) business days) will be granted to prepare for the meeting.

## **Preliminary Conference with Respondent**

In response to a charge, the Respondent will be provided an opportunity to meet with the Title IX Coordinator/Deputy Coordinator or designee and provide information and evidence. This meeting will occur within ten (10) business days of notice of charges being provided to the Respondent.

The Respondent has the option to accept responsibility for the charge(s) identified in the formal complaint. If the Respondent accepts responsibility, the Title IX Coordinator/Deputy Coordinator or designee will coordinate with the appropriate administrator to apprise the Respondent of the sanctions/discipline. If the Respondent accepts responsibility but does not accept the sanctions/discipline, then the process proceeds to an investigation and hearing. The Title IX Coordinator/Deputy Coordinator or designee will

1. request an informal administrative resolution for the charge if it is appropriate and both parties agree to it; and
2. proceed with a formal investigation and hearing process.

3. The Complainant and Respondent will be simultaneously notified in writing within five (5) business days of the outcome of the meeting.

## **INVESTIGATION**

The Title IX Coordinator/Deputy Coordinator for students or trained investigators whom they select for a particular case are responsible for investigating formal complaints of prohibited conduct, gathering evidence, and summarizing the relevant information. All parties directly involved in the investigation will be informed in a timely manner regarding the process and progress of the investigation. The Complainant and Respondent will be notified five (5) business days in advance of their requested participation in any Investigator interview to allow adequate time to prepare. A notice of a party interview may include a request for production of documents or other tangible evidence directly related to the investigation. Additionally, the notice will summarize documents or any tangible evidence that the Investigator intends to discuss at the interview and provide instructions on how to access and inspect such evidence prior to the interview.

During the investigation period, the Investigator will gather information and evidence and interview the parties and witnesses. The role of the party's Advisor during the investigation phase is to provide advice and counsel to a party. Advisors may not advocate, ask questions, or otherwise directly or indirectly unduly influence or delay a party's responses or engage in discussions with the Investigator. The Investigator will gather facts, including evidence that may corroborate or impact the credibility of evidence and witnesses. A party that does not fully respond to requests for information from the Investigator will be precluded from introducing evidence at the hearing that was within the control of a party and intentionally withheld from the Investigator. Any relevant evidence that is destroyed by a party may be taken into account at the hearing for the purpose of assessing credibility and the weight of evidence in the case.

Questioning or evidence about a Complainant's prior sexual history will not be considered by the Investigator except where the Complainant and Respondent have a prior intimate or sexual relationship that may be deemed relevant to a determination of consent or that someone else committed the alleged conduct.

The Investigator will not access, consider, disclose, or use privileged evidence or treatment records made or maintained by a recognized professional, such as a doctor, attorney, or pastoral counselor, without a party's voluntary written consent. If a party decides to share such records with the Investigator after providing their written consent, those records become a part of the investigation and are available for review by the opposing party.

The Investigators will create a report that will include information on the specific complaint, relevant policies, timeline, involved parties, interview summaries, evidence directly related to the allegations, and possible sanctions if the Respondent is found responsible, consistent with the appropriate disciplinary code (*Student Handbook, Faculty Handbook and Bylaws, Staff*

*Handbook*). However, the report will not include any determination of credibility or findings of responsibility.

The Investigator will send a copy of the investigative report to each party and the party's Advisor and provide access to all evidence directly related to the formal complaint that was obtained as part of the investigation in an electronic format or a hard copy. The parties will be given ten (10) business days to submit a written response to the Investigator for consideration prior to the Investigator's completion of the final investigative report. Before the report is finalized, either party may submit a written response to the Investigator's report challenging the Investigator's determination of relevance and the weight or persuasiveness of relevant evidence before the report is finalized. Nothing in the investigation report precludes a party from making corrections, providing explanations, or challenging the credibility, relevance, or persuasiveness of evidence in the formal hearing. At the close of the ten (10)-business-day review and comment period, the report will be forwarded to the Title IX Coordinator/Deputy Coordinator for students. This concludes the investigation.

A confidential file of the investigation, including personal notes, all evidence gathered, and other information, will be kept on file with the Title IX Coordinator/Deputy Coordinator for students.

The investigation should be reasonably prompt and may take an average of two to three months, depending on circumstances. It is the Investigator's responsibility to update the parties in writing as to the timeline for the investigation and any extensions and the reason.

At any point during the investigation, the Complainant or Respondent may choose to pursue an informal administrative resolution.

While the Investigator will make efforts to keep information in the investigation private, the College cannot restrain the ability of the parties to discuss the allegations or to gather and present evidence. Neither party is restricted in any way from discussing the allegations or gathering evidence or information about the allegations. Parties may submit both inculpatory and exculpatory evidence to the Investigator. Parties who wish to present evidence from an expert witness must present that witness's report to the Investigator prior to completion of the investigation.

## **HEARING**

At the conclusion of the investigation, the Title IX Coordinator/Deputy Coordinator for students will assemble a hearing panel and appoint a hearing officer.

The College has established standard procedures for all sexual harassment complaints under this policy. Hearings will be conducted using videoconferencing technology so that the parties may see and hear each other without being present in the same room. Hearings will be either audio recorded and transcribed or audiovisually recorded.

The three-person hearing panel will be made up from various constituencies of the College (staff and/or faculty and in some cases students). Selection will be made in such a way as to ensure that the panel members are trained appropriately and properly screened for potential conflicts of interest or bias.

The hearing will be presided over by a Hearing Officer who is not a Decision Maker or voting member of the hearing panel. The Hearing Officer is responsible for coordinating a hearing date and time, communicating with parties, administering an orderly and fair hearing, and assisting the panel with procedural questions and preparation of a hearing report.

### **Pre-hearing Procedures**

The Hearing Officer will notify the Complainant and Respondent in writing not less than twenty (20) business days prior to the hearing date of the date, time, and location of the hearing, rules regarding access to direct evidence relating to the formal complaint, mandatory pre-hearing disclosures, a description of the hearing process, rules of decorum, and the role of Advisors.

Not less than ten (10) days prior to the live hearing, the parties will submit to the Hearing Officer pre-hearing disclosures that consist of

- the Advisor's name and contact information; and
- a list of evidence to be presented at the hearing, including witnesses' names (other than the parties) with a brief summary of the purpose of their testimony and any exhibits that they intend to use or submit as evidence at the hearing.

The Title IX Coordinator/Deputy Coordinator for students will submit to the Hearing Officer pre-hearing disclosures that consist of

- a summary of all evidence directly related to the formal complaint that was previously sent to the parties along with instructions on access; and
- the formal complaint, investigation report, parties' responses to the investigation report, and relevant evidence compiled by the Investigator that will be marked for introduction into the record by the Investigator.

Not less than five (5) days prior to the hearing, the Hearing Officer/Panel will notify the parties of any witnesses and a list of evidence it has requested that was not in the pre-hearing disclosures submitted by the parties.

All information submitted will be shared with the parties and their Advisors and made available to the Hearing Panel. Parties can access and copy the evidence subject to review and inspection at their own expense. The Hearing Officer will make all evidence that was previously sent to the parties available at the hearing.

Any evidence that a party intends to introduce, which was not available or disclosed due to circumstances beyond a party's reasonable control, must be promptly identified to the Hearing

Officer, accompanied by a written request containing supporting information. The Hearing Officer will notify the parties regarding the admissibility of the evidence prior to or before the start of the live hearing.

### **Hearing Procedures and Decorum**

Life West will provide a live hearing with all parties, witnesses, and participants physically or virtually present. An audio or audiovisual transcript of the hearing will be created and made available to the parties for inspection and review after the hearing. All hearing participants are expected to conduct themselves in a respectful manner at all times. The Hearing Officer/Panel may remove a participant from the proceedings for refusal to follow the instructions of the Hearing Officer/Panel or inappropriate conduct that is, for example, disruptive, demeaning, belligerent, harassing, or intended to obstruct or cause delay.

During the hearing, the Hearing Officer/Panel will

- notify the parties of the Decision Maker(s) in the case;
- explain the preponderance of evidence standard;
- disclose range of sanctions if found responsible;
- explain the hearing procedures and rules of decorum to the participants, including rules that apply to Advisors and their ability to cross-examine;
- comply with hearing procedures and enforce rules of decorum;
- rule on issues of relevance, including objections to relevance from parties, and give a brief explanation whenever he or she finds that a question is not relevant. Advisors and parties will not be allowed to challenge the Presiding Official/Hearing Officer's relevancy rulings at the hearing; and
- make a decision solely on the evidence presented at the hearing using a preponderance of the evidence standard.

During the hearing, the Hearing Officer will allow parties to make brief opening statements (five (5) minutes) about their positions and the evidence that they intend to offer.

The formal complaint will be read into record, and the Title IX/Deputy Investigator will be called as a witness to provide an overview of the procedural history of the case and answer any questions that the presiding official or Decision Maker(s) have about the investigation report.

Next, the parties will be afforded the opportunity to present relevant evidence starting with the Complainant and Complainant's witnesses and followed by the Respondent and Respondent's witnesses. The Hearing Officer or Hearing Panel may ask follow-up questions at the conclusion of the direct testimony but will only act as an impartial fact finder at all times. After the Hearing Officer or hearing panel has asked relevant questions of a party or witness, the other party's Advisor will be given the opportunity to ask relevant cross-examination and follow-up questions including those relating to credibility.

The parties will be allowed to make closing statements (ten (10) minutes). The Complainant will go first, followed by the Respondent. A closing statement may include a summary of the



information shared during the hearing and the impact the party believes it has on the decision before the Hearing Panel. It may also include how the party has been impacted by the allegations and what their desired outcome of the hearing is.

Other general rules for the investigation and hearing regarding evidence and relevance are as follows:

- The rape shield provision limiting relevancy of the Complainant's prior sexual behavior to prove consent or that someone else committed the offense applies equally to the investigation and the hearing. The Respondent's prior sexual behavior is irrelevant unless he or she is also a Complainant.
- Evidence of a person's character or prior bad acts is admissible and must be admitted and objectively evaluated with respect to relevancy and to determine whether the evidence warrants a high or low level of weight or credibility.
- Any statements contained in testimony or a document that is not supported by a live witness willing to submit to cross-examination must be excluded and cannot be relied upon by the Decision Maker(s).
- The College reserves the right to appear and submit relevant evidence at the hearing, which was previously presented during the investigation or was unavailable due to no fault of its own or any party, after providing the parties with the necessary pre-hearing disclosure statement outlined above. However, the College is not a party to the proceedings and will not advocate on behalf of the Complainant or Respondent.
- No adverse inference may be drawn if a party or witness refuses to testify or respond to a question.
- Questions on cross-examination will be evaluated by the Hearing Officer at the hearing for relevancy before a party or witness is required to answer. The Hearing Officer will explain in real time any decision not to permit a question. However, Advisors may not challenge or speak to the Decision Maker's ruling.

### **Hearing Panel Determination of Responsibility/No Responsibility**

The three members of the Hearing Panel are equal Decision Makers and are responsible for deciding whether the Respondent is or is not responsible for violating College policy based on the notice of charges provided to the Respondent. A majority of the Hearing Panel must determine whether it is more likely than not that the Respondent committed a violation of this policy. A determination must be made for each policy violation alleged.

The Hearing Panel will issue a written report within five (5) business days and simultaneously notify the Complainant and Respondent of its determination and findings.

## **APPEAL PROCEDURES**

Both parties have the right to an administrative appeal of the outcome of the hearing. The appeal must be submitted in writing within ten (10) business days to the Title IX Coordinator and must specifically state grounds for appeal and the rationale and evidence in support of the reason for appeal.

### **Appeal Reasons**

The permissible grounds for appeal are limited to the following reasons:

- A procedural error occurred that materially affects the outcome of the hearing (e.g., substantial and material deviation from established procedures, erroneous relevance determinations, or failure to objectively evaluate all relevant evidence if they affected the outcome, etc.). It is important that the procedural error and its impact must be explained.
- To consider new evidence not available at the time the determination regarding responsibility or dismissal was made, which could affect the outcome of the matter. A summary of this new evidence and its potential impact must be included along with an explanation showing why the evidence was not presented at the original hearing.
- The Title IX Coordinator/Deputy Coordinator, Investigator, or Decision Maker had a conflict of interest or bias for/against Complainants or Respondents generally or one of the parties that affected the outcome of the matter. The conflict of interest or bias and its impact must be explained.
- The sanctions imposed are substantially disproportionate to the severity of the violation and substantially outside the parameters or guidelines set by Life West for this type of offense or the cumulative conduct record of the Respondent. The reasoning and evidence that the sanction was disproportionate or inappropriate must be explained.

### **Appeal Procedures**

The College must notify the other party when an appeal is filed, including a copy of the written submission received from the appealing party. The other party will be given five (5) business days to submit a written statement opposing the appeal and supporting the outcome. The College will give a copy of the opposing party's response or opposition to the party filing the appeal.

An Appeal Review Board will be established to review the case. The three-person Appeals Panel will be selected from various constituencies of the College (students, staff, and/or faculty). Selection will be made in such a way as to ensure that the members of the Appeals Panel are trained appropriately and screened for potential conflicts of interest and bias.

The Appeals Panel may examine all documentation and evidence relating to the case. The responsibility of the Appeals Panel is to conduct a closed and confidential review of the case and report and make recommendations to the Deciding Administrator. The Deciding Administrator, in complaints where the Respondent is a student, will be the Vice President of

Academic Affairs. The Deciding Administrator in complaints where the Respondent is a faculty or staff member will be the Director of Human Resources/Title IX Coordinator.

The Deciding Administrator will make a determination based on the report of the Appeal Review Board and has ultimate authority in all decisions and recommendations. The determination of the Deciding Administrator is considered final and not appealable. Both parties will receive a written decision describing the result of the appeal and the rationale for the decision within ten (10) business days. Simultaneous notice of the written decision will be sent to both parties.

## **REPORTING RESOURCES**

Anyone with knowledge about sexual misconduct, discrimination, gender-based violence, or the crimes of rape, sexual assault, sexual harassment, stalking, dating violence, or domestic violence is encouraged to report it immediately to the Executive Vice President (Dr. Anatole Bogatski: [abogatski@lifewest.edu](mailto:abogatski@lifewest.edu)) and the Title IX Coordinator (Tarsha Addison: [taddison@lifewest.edu](mailto:taddison@lifewest.edu)). Reports may also be made to any of the following personnel on campus:

## **CAMPUS TITLE IX COORDINATOR AND DEPUTY COORDINATOR**

**Title IX Coordinator - Staff/Faculty: Tarsha Addison**  
[taddison@lifewest.edu](mailto:taddison@lifewest.edu)  
(510) 780-4541

**Deputy Title IX Coordinator - Students: David Straub**  
[dstraub@lifewest.edu](mailto:dstraub@lifewest.edu)  
(510) 780-2590

## **TITLE IX TASK FORCE**

### **Hearing Officers and Decision Makers:**

Dr. Anatole Bogatski, Executive Vice President  
Tarsha Addison, Director of Human Resources and Campus Culture

### **Hearing Panel, Chairs:**

Danielle Lorta, Student Life Manager  
Loretta Saunders, Student Life Office Manager  
Julie Truong, Human Resources Generalist  
Andrew Herrera, Health Center, Customer Service Manager

### **Investigators:**

Ryan Odell, Health Center, Director of Compliance  
Julie Truong, Human Resources Generalist

David Straub, Chair of Basic Sciences, Compliance Officer  
Tarsha Addison, Director of Human Resources and Campus Culture  
Danielle Lorta, Student Life Manager

## **OTHER CAMPUS RESOURCES**

Campus Facilities Director (Michael Baldwin: [mbaldwin@lifewest.edu](mailto:mbaldwin@lifewest.edu))  
Student Life Manager (Dani Lorta: [dlorta@lifewest.edu](mailto:dlorta@lifewest.edu))  
Faculty Chairs (Ankur Tayal: [atayal@lifewest.edu](mailto:atayal@lifewest.edu), Jeanna Edwards: [jedwards@lifewest.edu](mailto:jedwards@lifewest.edu),  
Christian Labau: [clabau@lifewest.edu](mailto:clabau@lifewest.edu), David Straub: [dstraub@lifewest.edu](mailto:dstraub@lifewest.edu))  
Vice Presidents (Vice President of Academic Affairs, Dr. Pardeep Kullar: [pkullar@lifewest.edu](mailto:pkullar@lifewest.edu),  
Vice President of Institutional Advancement, Dr. Mark Zeigler: [mzeigler@lifewest.edu](mailto:mzeigler@lifewest.edu), Vice  
President of Clinic Operations, Dr. Scott Donaldson: [sdonaldson@lifewest.edu](mailto:sdonaldson@lifewest.edu))  
Athletics Director (Adriaan Ferris: [aferris@lifewest.edu](mailto:aferris@lifewest.edu))  
Administrator with supervisory responsibilities: Human Resources staff (Julie Truong: [jtruong@lifewest.edu](mailto:jtruong@lifewest.edu))

The College considers these people to be “Responsible Employees.” Notice to them is official notice to the College. The reporting party will be provided with written information regarding his or her options, including the choice to report to law enforcement and available medical and mental health treatment options. Anonymous reports can also be made to Life West Responsible Employees. The Title IX Coordinator will review the report and determine whether there is adequate information to initiate an investigation.

Protective measures for victims are available from the College whether or not the victim chooses to report to local and/or campus law enforcement and irrespective of whether the victim pursues a formal complaint through the College resolution process. Protective measures may include such actions as interim suspensions and/or no contact orders, such as in cases where the accused person’s behavior represents a risk of violence, threat, pattern, or predation.

Both Title IX and the Clery Act provide protections for whistleblowers who bring allegations of non-compliance with the Clery Act and/or Title IX to the attention of appropriate campus administrators. The College does not retaliate against those who raise concerns of non-compliance. Any concerns should be brought to the immediate attention of the campus Equal Employment Opportunity (EEO) and Title IX Coordinator, Tarsha Addison, and/or to officials of the U.S. Department of Education.

## **TITLE IX TASK FORCE TRAINING**

The Title IX Task Force are ATIXA Certified. ATIXA is an independent, not-for-profit organization served by an Advisory Board. The consulting firm TNG is nationally known for its leading expertise in Title IX compliance, litigation, and expert witness services. TNG now serves as the management company for the association. Title IX Training and Certification

Program documents are available to view in the Human Resources Department, or you may visit [www.atixa.org](http://www.atixa.org) for more information.

## **EXTERNAL SUPPORT AND RESOURCES**

For 24-hour confidential support, you can contact the following centers:

Alameda County Highland Hospital Sexual Assault Center (Oakland)\*

24/7 Crisis Line: 510-534-9290 or 9291

[http://oaklandwiki.org/Alameda\\_County/Sexual\\_Assault\\_Center](http://oaklandwiki.org/Alameda_County/Sexual_Assault_Center)

San Francisco General Hospital Trauma Recovery Center/Rape Treatment Center\*

Non-24/7 Line: 415-437-3000

[www.traumarecoverycenter.org](http://www.traumarecoverycenter.org)

Bay Area Women Against Rape (BAWAR) (Oakland)

24/7 Crisis Line (English/Spanish): 510-845-RAPE (7273)

<http://www.bawar.org/get-help-for-yourself/>

San Francisco Women Against Rape (SFWAR) (San Francisco)

24/7 Crisis Line: 415-647-7273

<http://www.sfwar.org/>

A Safe Place (Oakland)

24/7 Crisis Line: 510-536-SAFE (7233)

<http://www.asafeplacedvs.org/>

National Suicide Prevention Hotline

24/7 Crisis Line: 1-800-273-8255

Spirituality Services

Non-24/7 Line: 510-752-6281

East Bay Kaiser Permanente\*

Oakland Medical Center\*

\*This Emergency Department is where you should go within 72 hours for a medical forensic exam. The EEO and Title IX Coordinator oversees the College's affirmative action programs and monitors compliance with policies and laws that ensure equal opportunity for students, faculty, and staff. The Title IX Coordinator is ultimately responsible for ensuring that in all cases the behavior is stopped, the College acts to reasonably prevent its recurrence, and the effects on the victim and the community are remedied. The EEO and Title IX Coordinator is also responsible for ensuring that training is conducted annually for all Advocates, Investigators, Hearing Officers, Panelists, and Appeals Officers. Training will encompass a

hearing process that protects the safety of victims and promotes accountability. Training will focus on sexual misconduct, domestic violence, dating violence, sexual assault, stalking, sexual harassment, retaliation, and other behaviors that can be forms of sex or gender discrimination covered by Title IX and the Clery Act. Training will help those Decision Makers with the process of protecting the safety of victims and promoting accountability for those who commit offenses.

## **CAMPUS SEXUAL ASSAULT VICTIM'S BILL OF RIGHTS**

The "Campus Sexual Assault Victims' Bill of Rights" exists as part of the campus security reporting requirements, commonly known as the Jeanne Clery Act. In connection with reporting sexual misconduct including sexual assault, the Complainant/Victim has the following rights:

- They shall be notified of their options to notify law enforcement and be assisted in notifying such authorities if they so choose;
- They have the right to decline to speak with local law enforcement should such authorities be notified;
- They have the right to information about existing on- and off-campus counseling, mental health, medical, or other services;
- They have the right to options for and available assistance in changing academic, living, transportation, and working situations and other interim measures;
- The Complainant and the Accused are entitled to the same opportunities to have others present during a disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an Advisor of their choice; and
- Both the Complainant and the Accused shall be simultaneously informed, in writing, of the following:
  - the applicable policy and procedures for complaint investigations;
  - the outcome of any disciplinary proceeding that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking;
  - the procedures for the accused and the victim to appeal the results of the disciplinary proceeding;
  - any change in the results before they become final; and
  - when the results become final.

## **IF YOU ARE A VICTIM OF SEXUAL VIOLENCE**

If you are a victim of sexual misconduct, gender-based violence, or the crimes of rape, acquaintance rape, sexual assault, sexual harassment, stalking, dating violence, or domestic violence, some or all of the following safety suggestions may guide you after an incident has occurred:

1. Go to a safe place and speak with someone you trust. Tell this person what happened. If there is any immediate danger, dial 911 or contact the campus Security Officer at (510) 456-6239.
2. Consider securing immediate professional support (e.g., counseling, victim advocacy, and medical services) to assist you in the crisis.
3. If you are on campus during regular business hours, you may go to the Counseling Office, Human Resources Office, and Office of Student Life for support and guidance. These are confidential resources. After regular business hours or in any situation, local resources are also available and may be able to provide confidential assistance.
4. For your safety and well-being, immediate medical attention is encouraged. Seeking a medical forensic exam, ideally within 72 hours, is important in the case of rape or sexual assault. It is also important to note that the exam should be conducted at a hospital in the county where the rape/sexual assault occurred. Generally, there is no charge for the exam. An exam typically takes about three hours. The victim can also receive free STD testing, free antibiotic medications to prevent STDs, emergency contraception, and referrals to other resources that may be of benefit.

Preserve evidence following an incident of sexual assault, dating violence, domestic violence, or stalking:

1. If an incident of sexual assault, dating violence, domestic violence, or stalking occurs, it is important to preserve evidence to aid in the possibility of obtaining a successful criminal prosecution or a protection order.
2. In cases of sexual assault, avoid washing, douching, using the toilet, or changing clothing prior to a medical exam.
3. Any clothing removed should be placed in a paper bag.
4. Evidence of violence, such as bruising or other visible injuries, should be documented, including through photographic evidence.
5. Evidence of stalking, including any communication such as written notes, voice mail, social media postings, or other electronic communications, should be saved and not altered in any way.
6. Typically, if the police are involved or will be involved, they will obtain evidence from the scene, and it is best to leave things undisturbed until their arrival. They will gather bedding, linens, unlaundered clothing, and any other pertinent articles that may be used as evidence. It is best to allow the police to secure items in evidence containers, but if you are involved in the transmission of items of evidence, such as to the hospital, secure them in a clean paper bag or clean sheet to avoid contamination.
7. If you have physical injuries, photograph or have them photographed with a date stamp on the photo.
8. Record the names of any witnesses and their contact information. This information may be helpful as proof of a crime, to obtain an order of protection, or to offer proof of a campus policy violation.

9. Try to memorize details (e.g., physical description, names, license plate number, and car description), or even better write notes to remind you of details if you have time and the ability to do so.
10. If you obtain external orders of protection (e.g., restraining orders, injunctions, or protection from abuse), please notify the Campus Facilities Department so that those orders can be followed on campus.
11. Even after the immediate crisis has passed, consider seeking support from the College counseling services or the local YWCA Rape Crisis Center.
12. Contact the Title IX Coordinator or Deputy Title IX Coordinator if you need assistance with concerns, such as no-contact orders or other protective measures. The College is able to offer you reasonable academic support, changes to living arrangements, transportation resources or modifications, escorts, no contact orders, access to counseling services, and other support and resources as needed.

## **DEFINITIONS**

Life West has adopted the following definition of sexual harassment in order to address the special environment of the academic community that consists of not only employers and employees but also students:

### **Sexual Harassment**

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. Sexual Harassment as an umbrella category includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking.

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- **Quid Pro Quo:** An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (i.e., *quid pro quo*); or
- **Hostile Environment:** Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's educational program or activity; or
- **Sexual Assault:** Defined as forcible sex offenses. Any sexual act directed against another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent.

### **Sexual Exploitation**

Sexual exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another person and to situations in which the conduct does not fall within the



definitions of Sexual Harassment, Non-Consensual Sexual Intercourse, or Non-Consensual Sexual Contact.

## **THE VIOLENCE AGAINST WOMEN ACT**

- Sexual assault is any sexual act directed against another person, forcibly and/or against that person's will or not forcibly or against that person's will, where the victim is incapable of giving consent. Sexual assault includes incest and statutory rape.
- Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim.
- Dating violence is violence committed by a person who is or has been in a romantic or intimate relationship with the victim.
- Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

**Rape** is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator under any of the following circumstances:

- where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act;
- where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury to that person or another;
- where a person is prevented from resisting by means of any intoxicating or anesthetic substance or any controlled substance, and this condition was known or reasonably should have been known by the accused;
- where a person is at the time unconscious of the nature of the act, and this is known to the accused;
- where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused with the intent to induce the belief;
- where the perpetrator accomplishes the act against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat; and
- where the perpetrator accomplishes the act against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another person, and the victim holds the reasonable belief that the perpetrator is a public official.
- Any sexual penetration, however slight, is sufficient to complete the crime.

The use of force, fear, or threats to accomplish sexual intercourse against the will of the assailant's spouse is known as the "spousal rape law."

Other sexual offenses include the following:

- sodomy (forced anal intercourse);
- oral copulation (forced oral-genital contact);
- rape by a foreign object (forced penetration by a foreign object including a finger);
- sexual battery (the unwanted touching of an intimate part of another person for the purpose of sexual arousal).

The State of California's definition of sexual consent is defined as **affirmative consent**. Affirmative consent means the 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 they have the affirmative consent of the other person or persons to engage in sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved or the fact of past sexual relations between them should never by itself be assumed to be an indicator of consent.

The State of California's definition of **stalking** is when any person willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and makes a credible threat with the intent to place that person in reasonable fear for his or her safety or the safety of his or her immediate family.

The State of California's definition of **domestic violence** is abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship.

## **CALIFORNIA HATE CRIMES**

As defined by the California Penal Code, §§ 422.55, 422.6, a hate crime is a criminal act committed in whole or in part because of one or more of the following actual or perceived characteristics of the victim:

- disability
- gender
- nationality
- race or ethnicity
- religion
- sexual orientation
- association with a person or group with one or more of these actual or perceived characteristics

## Hate Crime Categories of Bias Under the Clery Act

- **Race** – a preformed negative attitude toward a group of persons who possess common physical characteristics genetically transmitted by descent and heredity that distinguish them as a distinct division of humankind;
- **Gender** – a preformed negative opinion or attitude toward a group of persons because those persons are male or female;
- **Gender Identity** – a preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender identity, e.g., bias against transgender or gender-nonconforming individuals;
- **Religion** – a preformed negative opinion or attitude toward a group of persons who share the same religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being;
- **Sexual Orientation** – a preformed negative opinion or attitude toward a group of persons based on their sexual attraction toward and responsiveness to members of their own sex or members of the opposite sex;
- **Ethnicity** – a preformed negative opinion or attitude toward a group of people who identify with one another through common heritage (common language, common culture, and/or an ideology that stresses common ancestry);
- **National Origin** – a preformed negative opinion about a group of persons based on their being from a particular country or part of the world; and
- **Disability** – a preformed negative opinion or attitude toward a group of persons based on their physical or mental impairments/challenges, whether such disability is temporary or permanent and congenital or acquired by heredity, accident, injury, advanced age, or illness.

## Sexual Misconduct

Life West considers non-consensual sexual intercourse violations to be the most serious and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and suspension and termination for employees. However, the College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other gender-based offenses, including intimate partner or relationship (dating and/or domestic) violence, non-consensual sexual contact, sexual exploitation, and stalking, on the basis of the facts and circumstances of the particular grievance. Acts of sexual misconduct may be committed by any person against any other person, regardless of the sex, gender, sexual orientation, and/or gender identity of those involved.

## Consent

In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing, and voluntary consent prior to and during sexual activity. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you do and don't want sexually. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence without actions demonstrating permission cannot be

assumed to show consent. Additionally, there is a difference between seduction and coercion. Coercion happens when someone is pressured unreasonably for sex. Coercing someone into sexual activity violates College policy in the same way as physically forcing someone to have sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because the person lacks the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing, and voluntary consent to any sexual activity is equivalent to a “No.” To encourage reporting and minimize the risk of harm to victims, the College will not pursue disciplinary action against victims reporting violations under this policy who were voluntarily under the influence of alcohol or drugs at the time of the incident.

### **Force**

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you. Okay, don’t hit me; I’ll do what you want.”). There is no requirement that a party must resist the sexual advances or request someone to stop. Resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced. The use of force is not “worse” than the subjective experience of the violation of someone who has sex without consent. However, the use of physical force constitutes a stand-alone nonsexual offense as well, as it is the College’s expectation that those who use physical force (restrict, battery, etc.) would face not only the sexual misconduct charge but also charges for the additional assaultive behavior.

### **Coercion**

Coercion is unreasonable pressure for sexual activity, such as compelling another person to do something through emotional or physical pressure, threats, or other forms of intimidation. Real or perceived power differentials between individuals may create an atmosphere of coercion that can significantly impair the ability to consent. Coercive behavior differs from seductive behavior on the basis of the type of pressure someone uses to get consent from another. When someone makes it clear to you that they do not want sex, they want to stop, or they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

## **Incapacitation**

Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the who, what, when, where, why, and how of their sexual interaction). Any time sexual activity takes place where the person did not understand any one of these six conditions, incapacity is at issue. An awareness of all six must be present for consent. Incapacitation may result from mental disability, sleep, involuntary physical restraint, or the consumption of alcohol or drugs. Possession, use, and/or distribution of any controlled substances, including Rohypnol, Ketamine, GHB, Burundanga, etc., is prohibited, and administering one of these drugs to another student is a violation of College policy. More information on these drugs can be found at <http://www.911rape.org>. Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. If the accused person knew or reasonably should have known that the victim was incapable of providing consent due to the use of alcohol or another drug, the accused person is in violation of College policy. The accused person's use of alcohol or other drugs does not diminish their responsibility for committing the sexual misconduct. The use of alcohol or other drugs will never function as a defense for any behavior that violates College policy.

## **Non-Consensual Sexual Intercourse**

Non-consensual sexual intercourse is defined as any sexual penetration or intercourse (anal, oral, or vaginal), however slight and with any object, of or with a person by another person that is without consent and/or by force. Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger, or object or oral copulation by mouth to genital contact or genital to mouth contact, no matter how slight the penetration or contact.

## **Non-Consensual Sexual Contact**

Non-consensual sexual contact is defined as any intentional sexual touching, however slight and with any object, of a person by another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth, or other bodily orifice of another individual or any other bodily contact in a sexual manner.

## **Other Misconduct Offenses When the Act is Based on Sex or Gender**

The behaviors listed below are misconduct *if* they are based on gender, which is inclusive of gender identity, gender expression, and sexual orientation:

- **Threatening or Causing Physical Harm, Extreme Verbal Abuse, or Other Conduct that Threatens or Endangers the Health or Safety of any Person;**
- **Discrimination** - Defined as actions that deprive other members of the community of educational or employment access, benefits, or opportunities on the basis of gender;
- **Intimidation** - Defined as implied threats or acts that cause an unreasonable fear of harm in another;

- **Hazing** - Defined as any method of initiation or pre-initiation into a student organization or student body, whether or not the organization or body is officially recognized by the College, that is likely to cause serious bodily injury, psychological harm, or social ostracism to any former, current, or prospective student;
- **Bullying** - Defined as repeated and/or severe aggressive behavior that is likely to intimidate or intentionally hurt, control, or diminish another person physically or mentally, which is not speech or conduct otherwise protected by the First Amendment;
- **Violence Between Those in an Intimate Relationship** - Includes romantic relationships, dating, domestic, and/or relationship violence. The existence of such a relationship shall be determined on the basis of 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. Intimate relationship violence is a pattern of abusive behavior in any relationship that is used *by one partner* to gain or maintain power and control over another intimate partner. Intimate partner violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone; and
- **Stalking** - Defined as a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others.

## **SEX OFFENDER REGISTRATION – CAMPUS SEX CRIMES PREVENTION ACT**

### **Megan’s Law**

The Campus Sex Crimes Prevention Act (CSCPA) of 2000, a federal law, requires institutions of higher education to provide the campus community with information on where they may obtain information on registered sex offenders in the State of California. It also requires sex offender registrants, who are already required to register in the state, to provide notice, as required under state law, to each institution of higher education in which they are currently enrolled as a student or full- or part-time employee (with or without compensation). Those participating in a vocation are also required to provide notice (California Penal Code Section 290.009). The registration process must be conducted at the Hayward Police Department. Local law enforcement may also notify the public about high-risk and serious sex offenders who reside in, are employed in, or frequent the community. This registry is available for the State of California and the County of Alameda at

<https://oag.ca.gov/sex-offender-reg>  
[https://www.alamedacountysheriff.org/les\\_megan.php](https://www.alamedacountysheriff.org/les_megan.php)

## Sanctions

The College may impose one or more sanctions on a student, staff member, or faculty member who violates College policy. When a sanction or responsive action is determined, the factors that are considered may include the following:

- the nature, severity of, and circumstances surrounding the violation;
- an individual's disciplinary history;
- previous grievances or allegations involving similar conduct;
- any other information deemed relevant by the Panel;
- the need for sanctions or responsive actions to bring an end to the discrimination, harassment, and/or retaliation;
- the need for sanctions or responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation; and
- the need to remedy the effects of the discrimination, harassment, and/or retaliation on the victim and the community.

The range of sanctions for discrimination, harassment, and sexual misconduct are subject to the full range of disciplinary actions, inclusive of a warning of expulsion and termination.

Disciplinary actions include the following:

- verbal or written warning;
- educational sanctions and training;
- contributed service;
- no contact directive;
- restitution;
- loss of privileges including limitations on the use of or access to college-related facilities, services, and activities for a specified period of time;
- demotion or reassignment;
- disciplinary probation;
- deferred suspension;
- interim suspension under exceptional circumstances or other disciplinary action pending a hearing, especially in matters of safety or for the good of the community;
- suspension; and
- expulsion or termination from the College.

In addition to or in place of the above sanctions, the College may assign any other sanction(s) and impose corrective action as deemed appropriate.

I certify that I have read, understand, and agree to the terms set forth in this policy. I further certify that I have received a copy of this policy. I acknowledge that Life West may change and/or modify this policy at any time for any reason and that failure to abide with the above stated policy may lead to disciplinary action up to and including termination of employment.

**Employee or Student**

\_\_\_\_\_

**Print Full Name**

\_\_\_\_\_

**Signature**

\_\_\_\_\_

**Date**