

Title IX Sexual Harassment Policy and Procedure Training

Part III



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Agenda for Session III

- Hearing Process
- Written Determinations
- Sanctions/Remedies
- Appeals Process



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Hearings



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Overarching Principles

- Complainant and Respondent will be treated equitably.
- There will be an objective evaluation of all the evidence – both inculpatory and exculpatory.
- Respondent is presumed not responsible for a policy violation unless a finding of responsibility is made at the conclusion of the grievance process.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

General Provisions

- Grievance process should generally be completed within 120 days.
- This time frame may be extended when good cause exists for the delay.
- Hearing Officer must not have a conflict of interest or bias for or against the Complainant or Respondent, or against complainants or respondents generally.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Hearing Officer

- A live hearing will be conducted by a Hearing Officer who will act as a decision maker to reach a final determination of responsibility.
- The Hearing Officer cannot be the Title IX Coordinator or the Investigator.
- The Hearing Officer will be appointed by the Title IX Coordinator, and may be a College employee, or may be an outside individual contracted to serve as Hearing Officer.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Notice

- Parties must have access to the completed investigation report for no less than 10 days prior to the hearing.
- Parties will also be provided with notice of all meetings, interviews, or hearings with sufficient time to prepare for any meeting, interview, or hearing.
- Such notice will include the date, time, location, participants, and purpose of the meeting, interview, or hearing.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Rules of Procedure and Decorum

- The hearing will be held pursuant to the Rules of Procedure and Decorum.
- Rules of Procedure will set out in detail the procedures by which the hearing will be held.
- Rules of Decorum will require all participants to treat each other with respect and provide an enforcement mechanism for those who refuse to comply.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Hearing Logistics

- Hearing may be conducted in person on campus or may be conducted through video conferencing.
- May be held through video conferencing if it is not reasonable or feasible to have the parties together in the same room.
- May be held by video conferencing at the request of either party.
- Hearing will be recorded.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Preparing for the Hearing

- The Hearing Officer should:
 - Review the Title IX Sexual Harassment Policy
 - Review the Formal Complaint to identify the allegations
 - Review the investigative report and any evidence provided by the Investigator
 - Review the Rules of Procedure and Decorum
 - Address any questions about hearing procedure with the Title IX Coordinator



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Overview of the Hearing Process

- The Investigators will make all evidence that is directly related to the allegations available at the grievance hearing.
- All parties may refer to such evidence and may use it in cross examination.
- The Investigators will provide a copy of the investigative report and all evidence that is relevant to the allegations in the formal complaint to the Hearing Officer.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Overview of the Hearing Process

- However, the Hearing Officer **may not** defer to the investigative report and must objectively evaluate all relevant evidence and independently reach a determination regarding responsibility.
- Important to keep an open mind going into the hearing.
- Consider inculpatory and exculpatory evidence.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Overview of the Hearing Process

- The Investigators, Complainant, and Respondent all have the ability to testify and call witnesses at the hearing, and to provide evidence to the Hearing Officer.
- The Hearing Officer will have the opportunity to ask questions of all parties and witnesses during the hearing.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Questions from the Hearing Officer

- Hearing Officer should think of relevant questions to ask when preparing for the hearing.
- Review the information in the investigative report and all evidence provided by the Investigators in advance.
- But remember to keep an open mind and avoid prejudgment of the facts based on the information in the report.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Questions from the Hearing Officer

- Consider if there are questions needed to clarify the information in the report.
- But also remember, the outcome must be based on the evidence that is presented at the hearing and may not rely on the investigative report.
- If important information was in the investigative report, but was not presented at the hearing, the Hearing Officer should ask about it.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Cross Examination and Relevance Determinations



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Cross Examination

- After the Hearing Officer asks their questions, each Advisor will ask all relevant questions directly to the other party and/or witnesses, including follow-up questions and those challenging credibility.
- The cross examination at the live hearing must be conducted directly, orally, and in real time.
- At no time will a Complainant or Respondent be allowed to conduct cross examination of witnesses or the other party personally.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Cross Examination

- If a party does not have an advisor present at a live hearing, the College will provide an advisor of the College's choice to conduct the cross-examination on behalf of that party.
- Advisors must abide by the Rules of Procedure and Decorum in questioning parties and witnesses.
- Any advisor who does not abide by the Rules of Procedure and Decorum will be warned or dismissed from the hearing at the discretion of the Hearing Officer.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Cross Examination

- In general, the Hearing Officer cannot rely on statements from any individual who does not submit to cross examination in reaching a determination regarding responsibility.
 - Hearing Officer cannot allow a witness to “waive” a question – the party/witness must answer all relevant questions.
 - Decision must be based on evidence at the hearing that is subject to cross examination.
- In very limited circumstances, the Hearing Officer may consider statements by Complainants and Respondents that are against the individual’s interest even if that individual does not submit to cross-examination.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Cross Examination

- A statement against interest is a statement that could expose the individual to a finding of responsibility and sanctions, or a statement that tends to invalidate an individual's complaint against another.
- For example, if during an interview with an Investigator, a Respondent makes a statement admitting to the alleged conduct that would violate this policy, or a Complainant makes a statement that information in the Formal Complaint was false, then the Hearing Officer may consider those statements even if the individual does not submit to cross-examination.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Cross Examination

- The Hearing Officer cannot draw an inference about a determination of responsibility based solely on a party's or witness's absence from the live hearing or refusal to submit to cross examination.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Relevance

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



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Relevance in Practice

- The Rules of Procedure will set out more details.
- Generally, for each witness who gives a statement at the hearing, the Hearing Officer will ask questions and the person will answer.
- Then each party's advisor will ask a question, and the Hearing Officer will state whether or not the question is relevant.
 - If the question is relevant, the witness must answer the question.
 - If the questions is irrelevant, the Hearing Officer will give a brief explanation as to why the question is not relevant.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Relevance Determinations

- Does this question ask for information that will help the Hearing Officer in deciding whether the allegations are more or less likely to be true?
- A question cannot be excluded on the basis of relevance solely because it calls for prejudicial evidence or evidence of character.
- Ask for clarification if the purpose of the question is unclear or you need more information to determine relevance.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Relevance Determinations

- The following types of evidence must be considered irrelevant by the Hearing Officer:
 - Evidence that is not pertinent to proving whether a fact material to the allegation is more or less likely to be true
 - Information that is protected by privilege (e.g. attorney-client privilege)
 - Any party's medical, psychiatric, psychological, or counseling records without that party's voluntary, written consent
 - Any information about the Complainant's sexual predisposition or prior sexual behavior, unless:
 - 1) it is offered to prove that someone other than the Respondent committed the behavior alleged in the formal complaint, or
 - 2) it involves specific incidents with the Respondent and is offered to prove consent



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Hypothetical

- Respondent's advisor begins asking questions about what a Complainant was wearing the night of an alleged assault – is this relevant?



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Determination of Responsibility



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Determination of Responsibility

- After a thorough examination of the evidence and cross examination presented during the live hearing, the Hearing Officer will make a determination of “responsible” or “not responsible” for violations of the Title IX Sexual Harassment policy using **the preponderance of the evidence standard.**



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Preponderance of the Evidence

- In other words, the Hearing Officer's final determination indicates if there is sufficient evidence to conclude that **it is more likely than not** the Respondent engaged in conduct that meets the College's definition of Sexual Harassment.
- This standard applies to any Respondent under this policy (student, staff, or faculty).



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Determination of Responsibility

- The Hearing Officer is responsible for drafting a Hearing Determination letter, outlining the rationale for his/her decision.
- The letter will be distributed simultaneously to both the Complainant and Respondent along with information about how to file an appeal.
- The determination will become final and any sanctions will take effect after the resolution of any appeal, or if no appeal is filed, after the deadline to file an appeal has passed.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Determination Letter

- Identification of the allegations constituting Sexual Harassment in the Formal Complaint;
- Description of the procedural steps taken, including any notices, interviews, investigations, and hearings;
- Findings of fact that support the determination;
- Conclusions regarding the application of the policy to the facts; and
- A statement and rationale for the result for each allegation including the determination of responsibility, any sanction, and whether any remedies will be provided to the Complainant
- Acceptable bases for an appeal



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Determination Letter

- **Identification of the allegations constituting Sexual Harassment in the Formal Complaint**
 - Review the Formal Complaint and clearly identify each allegation
 - If there are multiple allegations, clearly identify each allegation



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Determination Letter

- **Description of the procedural steps taken, including any notices, interviews, investigations, and hearings**
 - Be detailed in describing the procedural steps taken
 - Provide the procedural steps taken for the entire grievance process
 - Include when each step occurred, and who was involved in each step



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Determination Letter

- **Findings of fact that support the determination**
 - Remember that findings of fact must be based on the evidence presented at the hearing and cannot be based on the investigation report alone
 - Include both inculpatory evidence and exculpatory evidence
 - If a witness did not submit to cross examination, their statement cannot be relied upon in making the determination
 - Include an explanation if a witness did not submit to cross examination and their statement was not considered



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Determination Letter

- **Conclusions regarding the application of the policy to the facts**
 - This involves applying the definitions in the policy to the facts that were established in the previous section
 - Review the Title IX Sexual Harassment Policy for relevant definitions



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Determination Letter

- **A statement and rationale for the result for each allegation including the determination of responsibility, any sanction, and whether any remedies will be provided to the Complainant**
- Include a clear statement for each allegation stating whether the Respondent is found “responsible” or “not responsible.”
- Include an explanation of why that is the determination.
- If the Respondent is found responsible, include any sanctions that will be imposed and any remedies for the Complainant.
- Be specific about sanctions and remedies and explain why those are being imposed.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Determination Letter

- **Acceptable bases for an appeal of the Hearing Determination**
- This is from the Title IX Sexual Harassment Policy.
- Purpose is to make sure the parties are aware of their right to appeal and the grounds on which they can base an appeal.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Determination Letter

- Tips for writing the determination letter:
 - Use clear organization (consider including headings for the required sections)
 - Be as specific as possible – avoid vague terms like “some” or “a lot”
 - Use consistent terminology throughout
 - Focus on the facts and avoid subjective terms



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Determination of Responsibility

- If there is a finding of responsibility, the Hearing Officer determines the appropriate sanction and whether remedies should be provided.
- The Title IX Coordinator will work with others on campus to implement the sanctions and remedies.
- Sanctions must be appropriate and consistent within the College's policies.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Potential Sanctions - Students

- Warning
- Probation
- Suspension
- Dismissal/Expulsion
- Withholding diploma
- Withholding degree
- Transcript notation
- Organizational sanctions
- Restrictions from events and/or college-sponsored activities.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Potential Sanctions - Employees

- Warning
- Probation
- Suspension with or without pay
- Termination



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Remedies

- In addition to sanctions imposed on the Respondent, remedies can be offered to the Complainant in order to restore and preserve equal access to the College's educational program and activities.
- Remedies may be, but are not limited to, a continuation of previously offered supportive measures.
- Additionally, remedies may burden the Respondent or be punitive/disciplinary in nature.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Appeals



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Appeals

- Both the Complainant and the Respondent are provided the opportunity to appeal a determination of responsibility, as well as the Title IX Coordinator's decision to dismiss a formal complaint.
- Appeals must be written and submitted within 48 hours of receipt of the Decision Notification Letter (except in the case of new evidence).
- The Appeals Officer will be designated by the President of the College. In most cases, the designee will be the Vice President/Dean of Student Life (students), CFO (staff), and/or Vice President/Dean of Academic Affairs (faculty).



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Appeals

- The appeal will be evaluated to determine if valid grounds exist for a review of the case. The following are the only permissible grounds for an appeal under this Policy:
 - Procedural irregularity that affected the outcome,
 - The existence of relevant information that was not available or known at the time of the hearing, and which, if known, might have changed the outcome of the hearing, or
 - The Title IX Coordinator, Investigator(s), or Hearing Officer had a conflict of interest or bias that affected the outcome of the matter.
- No appeal may be based only upon dissatisfaction with the determination and/or sanction



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Appeals

- The Appeal Officer will notify the parties that an appeal has been filed. Each party will then have 10 working days to submit a written statement in support of, or challenging the outcome of the hearing.
- The Appeal Officer will issue a written determination of the outcome of the appeal, describing the result of the appeal and the rationale in support of that decision, generally within 15 days of the deadline for the parties to submit their written statements.
- The decision of the Appeal Officer, including any changes in the sanctions, will be simultaneously issued in writing to both parties.



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Final Thoughts

- Treat all individuals involved in this process with respect and courtesy
- Be even handed and impartial – this process is meant to be fair to all involved
- Remember the impact of the process on those involved and be sensitive to those difficulties



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™

Thank you for attending!

For questions, please contact:

Associate VP & Chief HR Officer/ Title IX Coordinator

573-592-5226

mandy.march@wcmo.edu



WESTMINSTER
COLLEGE

THE POWER IN PURPOSE™