

 WASHINGTON STATE UNIVERSITY

**Supervisor Training – Civil Rights Compliance**

Holly Ashkannejhad  
Director | Title IX Coordinator  
Office of Civil Rights Compliance & Investigation (CRCI)  
crci@wsu.edu



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**Agenda**

- Background/Mission
- Policy
- Responsibilities and Rights
- CRCI Process

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**Background / Mission**

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- Central intake and investigation office for student and employee complaints of:
  - Discrimination,
  - Discriminatory harassment, and
  - Sexual misconduct
- Central resource for compliance recommendations and work relating to:
  - Equal Employment Opportunity / Affirmative Action compliance
  - Title IX compliance
  - ADA compliance
  - Compliance education and training

CRCI Primary Responsibilities

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Why these issues?

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- **Civil Rights Act of 1964**
  - Title VI: prohibits discrimination in educational programs receiving federal funds on basis of race, color, or national origin
  - Title VII: prohibits discrimination by covered employers on the basis of race, color, religion, sex or national origin
- **Title IX of the Education Amendments of 1972**
  - Prohibits against discrimination on the basis of sex in educational programs receiving federal financial assistance
- **Americans with Disabilities Act of 1990 / Section 504 of the Rehabilitation Act of 1973**
- **Vietnam Era Veterans' Readjustment Assistant Act**
  - Equal opportunity and affirmative action for veterans
- **Age Discrimination in Employment Act of 1967 (40+)**
- **Executive Order 11246 of 1965 (Affirmative Action)**

Federal Law

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**Washington State Law Against Discrimination, RCW 49.60**

- Prohibits discrimination on the basis of race, creed, color, national origin, sex, marital status, age (40+), disability, retaliation, sexual orientation/gender identity, honorably discharged veteran or military status, or use of a trained service animal

**Washington I-1000**

- Allows WA state to implement affirmative action laws and policies, while continuing to ban discrimination and preferential treatment
- Race, sex, color, ethnicity, national origin, age, sexual orientation, disability, honorably discharged veteran or military status

**RCW 28B.110**

- Prohibits gender discrimination against students in higher education

State Law

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**Integrity, Trust, and Respect**

- We are committed to ensuring trust and respect for all persons in an environment that cultivates individual and institutional integrity in all that we do.

**Diversity and Global Citizenship**

- We embrace a worldview that recognizes and values the importance of domestic and global diversity, global interdependence, and sustainability.

**Freedom of Expression**

- We are committed to a free exchange of ideas in a constructive and civil environment, including the canons of academic freedom in research, teaching, and outreach.

WSU's Values

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**Sexual Assault:**

- 1 in 5 college women and 1 in 16 college men.
- 90% know the offender
- At least 50% involve alcohol

More than 1 in 3 women and 1 in 4 men have experienced rape, physical violence, and/or stalking by an intimate partner;

There are ~6 million stalking victims in the United States each year;

- Dramatically underreported:**
  - 2% of incapacitated sexual assault survivors report
  - 13% of forcible rape survivors report
- 69% of female and 53% of male victims report having experienced this before the age of 25.
- more than 1/2 of the female survivors and more than 1/3 of the male survivors say they were stalked before the age of 25.

Campus Sexual Assault Study (2007), prepared for the National Institute of Justice

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Why these issues?

It's the right thing to do.

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Supervisor Liability

- **Brown vs. Scott Paper Worldwide Co.** (2001, WA Supreme Court)
  - Individual supervisors can be held individually liable for their discriminatory acts under the WLAD

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Policies

- **EP 7** – University Web Accessibility Policy
- **EP 12** – EEO/AA Policy
- **EP 28** - Policy on Faculty-Student and Supervisor-Subordinate Relationships
- **EP 26** - Internal Investigations, Training, and Policy
- **BPPM 50.30** - Workplace Violence
- **BPPM 50.31** - Bullying Prevention and Reporting
- **WAC 504-26** - Standards of Conduct for Students

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**WSU Policy EP 15**

Policy Prohibiting Discrimination, Sexual Harassment, And Sexual Misconduct\*

\*Currently under revision

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EP 15

- Applies to all students, faculty, staff, and others having an association with the University including, but not limited to, such individuals at all campuses and WSU employment sites
- Applies to on and off campus conduct
  - *If the continuing effects of the conduct have the potential to unreasonably interfere with or limit an individual's work, academic performance, living environment, personal security, or participation in any WSU activity.*

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**Protected Classes**

Race	Sex/gender	Sexual orientation	Gender identity/ expression	Religion
Age	Color	Creed	National or ethnic origin	Physical, mental or sensory disability, including disability requiring the use of a trained service animal
Marital status	Genetic information	Status as an honorably discharged veteran or members of the military		

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## Types of Discrimination

- Disparate Treatment
  - Intentional
- Adverse Impact
  - Unintentional
- Discriminatory harassment
  - Definition on next slide

*UNJUSTIFIED BEHAVIOR*

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## Discriminatory Harassment

- Discriminatory harassment is:
  - improper conduct
  - toward a particular individual, individuals, or groups
  - on the basis of one or more of the protected classes,
  - that is sufficiently severe, persistent, or pervasive that it has the purpose or effect of:
    - Creating an intimidating, hostile, or offensive environment; or
    - Unreasonably interfering with work, academic performance, living environment, personal security, or participation in any WSU activity.

*Floeting v Group Health Coop., 2019 Wash. – “objectively discriminatory”*

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## Examples

- Search committee chair recommends hiring a female for a position *because* the office is currently made up of predominantly male employees.
- Staff schedule a meeting in a location without ADA approved access. One employee is unable to attend because of access issues.
- An employee sends forwarded emails to others which include disparaging information about members of a protected class.
- A supervisor subjects an employee with protected medical leave to unwarranted and regular criticism.
- An employee regularly talks about sexual activities in the workplace, making others uncomfortable.

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Sexual Harassment

- Discrimination based on sex and/or gender
- Unwelcome verbal or physical conduct of a sexual nature
- **Quid pro quo**
- **Gender Based Harassment**
  - non-sexual harassment that occurs because of a person's sex and/or gender
  - harassment based on a person's nonconformity with sex and/or gender stereotypes.

*Sufficiently severe, persistent, or pervasive*

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Sexual Harassment examples

- Coercive sexual relationships or advances with students
- Viewing pornography in the workplace
- Using FERPA information to contact and harass
- Unwanted hugging and touching

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Sexual Misconduct

- Unwanted sexual contact, including sexual intercourse
- Intimate partner violence
- Stalking
- Sexual exploitation

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### Policy on Faculty-Student and Supervisor-Subordinate Relationship (EP 28)

- Having supervisory authority over someone with whom you are in a relationship is prohibited.
- Report to HRS or to supervisors
- Reporting lines may be altered

*"In such relationships, voluntary consent by the student or subordinate is suspect because of the inherently unequal nature of the relationship."*

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### Retaliation and Interference

**Retaliation:** includes any act that would dissuade a reasonable person from making or supporting a complaint, or participating in an investigation, under this policy.

**Interference:** Actions that dissuade or attempt to dissuade complainants or witnesses from reporting or participating in an investigation, or actions that delay or disrupt, or attempt to delay or disrupt, an investigation

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### Discrimination and Protected Speech

Not protected:

- **Discriminatory harassment** (severe, persistent, or pervasive)\*
- **Obscenity** (e.g. child pornography)
- **Defamation/libel**
- **True threats:** Statements in which the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.
- **Fighting words**
  - Words which are likely to provoke an immediate violent reaction
- **Fraudulent misrepresentation**
- **Incitement to imminent lawless action**
- **Perjury**
- **Blackmail**

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Rights & Responsibilities

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Your rights

- To work in an environment free of discrimination, sexual harassment, and sexual misconduct
- To report concerns to supervisors, HRS, and CRCI
- To request consultations with HRS and CRCI
- To access other university resources
- To be free of retaliation

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Employee Reporting Responsibilities

- All WSU employees (with limited exceptions)
- Who have information regarding incidents of sexual harassment or sexual misconduct
- Must report that to CRCI or the WSU Title IX Coordinator.

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## Exceptions

- Employees who are statutorily barred from reporting
- Employees, interns, professional trainees, and other similar individuals who are not statutorily barred from reporting but who provide services to students in WSU's Counseling and Testing Services or are otherwise designated by WSU to provide mental health services, or who provide services to students in WSU's Health and Wellness Services;
- Employees participating in a preventative education program for students regarding sex and gender-based violence or a related program, during which a student discloses having experienced sexual harassment or sexual misconduct; and
- Employees who have no authority to take action to redress sexual harassment or sexual misconduct and who could not reasonably be viewed by students as having such authority

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## Employee Reporting Responsibilities

- **All WSU employees** with supervisory responsibility
- Who have information regarding incidents of **discrimination**
- Must report that to CRCI.

*All other employees are encouraged to report*

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## Interactions with reporting parties

- Let them know you are not a confidential resource, and you may have to report the information to CRCI
- *Do not investigate.*
- Assess whether the concern includes information related to EP 15.
  - If so, report.
  - If not, handle internally or identify other resources.
- Provide resources and reporting options.

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**Interactions with reporting parties**

- Initial interaction is important
- Clearly communicate non-confidentiality and reporting obligations
- Offer support
- Knowledge of process
- Can serve as support person for any participants
- Information on resources
- Consult with CRCI

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**Possible Scenarios - students**

"I did not complete my homework, because I was assaulted over the weekend."

"I think my professor has graded me unfairly, because he doesn't like students from XYZ."

"I can't work in this student group, because the other student is harassing me."

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**Possible Scenarios - employees**

"You can't hold me accountable for that task, because you are aware that I have a disability."

"My coworker hushes me in meetings and laughs when I share my opinion"

"Work assignments are being distributed unequally"

"My coworker is harassing and bullying me."

"I believe I was denied tenure because of XYZ."

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**Common Triggers**

- Bullied
- Harassed
- Intimidating
- Hostile
- Stifling my voice
- Treating me differently
- Compensation or work assignments are unfair

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**Department Level**

Never a bad idea to consult with CRCI

Generally, departments can handle (without involving CRCI)

- Disputes, that do not involve discrimination
- Venting – where language used is alarming, but descriptions of conduct are low-level
- Grading concerns through Academic Rule 104
- Low-level complaints of discrimination
- Best practice: always provide complainant with CRCI information

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**Practical Pointers**

- Personal Space / compliments
- Don't ask students/subordinates (or vice versa) out on date
- Limit gossip
- Assess work objectively
- Professionalism from leaders

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**Rights for Individuals with Disabilities**

- Reasonable Accommodations
- Protected Medical Leave
- Use of a trained service animal

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**Process for Addressing Requests for Disability Accommodations**

If an employee requests disability accommodations, the supervisor should:

- Refer the employee to HRS – Disability Services.
- HRS will work with the employee on the process for requesting and providing documentation.
- HRS will provide a recommendation to the supervisor for a reasonable accommodation
- The supervisor can consult with HRS about the reasonable accommodation.
  - The supervisor's role is to ensure that the employee can perform the responsibilities of the job with the accommodation.

Supervisor's focus is on the job, not the disability. Supervisors do not need to know what the disability is.

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**Family Medical Leave Act**

When an employee is injured or ill and requests extended time off from work to recover, supervisors should:

- Refer employee to HRS to discuss different leave options, including unpaid FMLA leave.
- Arrange for temporary management of the employee's duties during absence.
- When the employee returns to work, the employee will resume their duties.
- Any changes to employee's duties after return should be carefully considered in consultation with HRS.
- FMLA leave is a federal right with a prohibition on retaliation.

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Supervisors should be aware of additional employee rights:

- Washington's Family Leave Act (FLA) which allows for:
  - Up to an additional 12 weeks for bonding with their newborn
  - Leave for placement of a child with the employee for adoption or foster care
  - Leave to care for an employee's family member (child, spouse, registered domestic partners, parent) who has a serious health condition
  - Leave for any qualifying exigency arising out of the fact that a family member is a military member on covered active duty status
- Pregnancy disability leave under FML
- Pregnancy accommodations:
  - Frequent, longer, or flexible restroom breaks
  - Modifying a no food or drink policy
  - Providing seating
  - Limiting lifting to 17 lbs or less
  - Job restructuring, work station accommodation
  - Flexibility for medical provider visits

### Additional rights

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- Review programs and practices
- Think critically – anticipate challenges
- Plan for visitors
- Encourage faculty, staff, student employees to provide supportive and flexible response to requests for accommodations
- Know your resources (HRS, Access Center, ADA Coordinator)
- Web Accessibility

### Accessibility

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- Are policies enforced across the board in your department?
- Do you evaluate people on a regular and fair basis?
- Have you ever criticized an employee on matters that are not strictly work related?
- Are your comments and questions strictly work-related when you evaluate job candidates?
- Do you take accurate, objective notes?
- Are those notes strictly factual information?
- Do you do your best to leave any stereotypes you may have outside the office door?
- Do you strive to make your department a supportive, bias-free environment?
- Do you set an example your employees can follow?

### Departmental Assessment

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### Characteristics of Sexually Harassing Environments

- Male-dominated leadership
- Fields considered "atypical for women"
- Organizational tolerance
- Perceived risk of complaining
- Perceived lack of sanctions for offenders
- Perception that one's complaints will not be taken seriously

National Academies Press: Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine (2018)

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### Equal Employment Opportunity/Affirmative Action

- Washington state laws
- Affirmative Action Plan
  - Utilization goals
  - Department demographics
- Focus on:
  - Recruitment equity and diversifying candidate pool
  - Hiring/promotion equity
  - Training/mentorship
    - Providing professional development
    - Require regular training on EP 15, equity, navigating differences
  - Promote civility and professionalism
  - Lead by example, set a culture where diversity is welcomed and appreciated, understand your own implicit biases, and provide support for reporting

The processes mostly likely to contribute to the goal of diversifying the workforce are those conducted in the context of an ongoing, institution-wide commitment to diversity.

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### Achieving Diversity through Recruitment

- Forming the search committee:
  - Diverse perspectives
  - Knowledgeable about the needs of the position
- Educating the Committee:
  - Take the Search Committee Training
  - Work with HR to learn best recruitment practices for a diverse candidate pool
    - Broad searches and advertisements, informal contacts
    - Examine hiring biases of the committee
- Position Description:
  - Be thoughtful in the job description/duties
  - Include everything you want to consider as a qualification in the position description
  - Minimum vs. preferred
  - Be wary of being too narrow or too broad
  - Diversity-related experience

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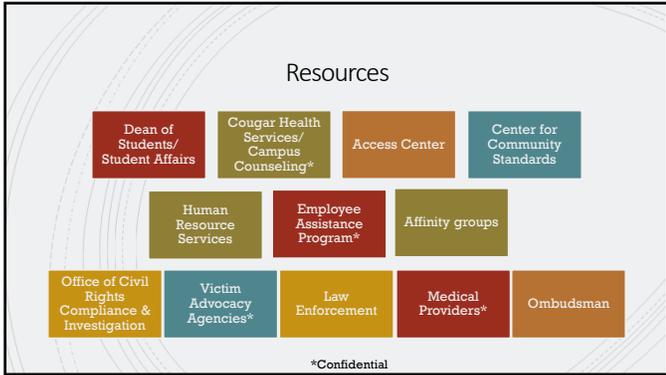
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### Considerations

- Not every complaint results in an investigation
- Many complaints result in:
  - Consultation
  - Referrals
  - Performance Expectation Counseling
  - Additional training
  - Mediation
- Many complaints are concurrently assessed by CRCI, HRS and/or Internal Audit

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### Investigations

- Typically, there is sufficient information to warrant an investigation when:
  - Allegations describe conduct prohibited by EP 15 (sufficiently, severe, persistent, or pervasive),
  - Allegations have supporting information,
  - Allegations are of a very concerning nature, or
  - Some indication of credibility
- Investigation is the best resolution path vs. Informal resolution.
- No bright line rule.
- Each case assessed individually.
- Credibility/Veracity of complaint also assessed.

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### Investigations

- Notice of Investigation
- Impartial/Neutral Investigation
  - Interview Witnesses
  - Gather evidence
- Review gathered evidence
- Preponderance of the Evidence
- Report with Findings of Fact to CCS or Supervisors/HRS
- Appeals
- Discipline/Sanctions from CCS or Supervisors

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What Can Participants Expect?

- Care and Compassion
- Steps may be taken to contribute to the complainant's safety during the investigation.
  - Arrangements may be made for:
    - Safety concerns,
    - Housing,
    - Class schedules,
    - Work schedules or locations,
    - Course withdrawals (without penalty).
- All parties can access resources and support services.

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Supervisors role during investigation

- Minimize disruption and stress in the workplace
- Coordinate interim measures
- Provide witness information
- Encourage employees to speak with CRCI
- Address conduct after investigation

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Questions?

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