**Policy** **602: Title IX, Equal Opportunity, Harassment and Non-Discrimination**

Category: Personnel and Student Affairs

Covered Individuals: All CEI Employees and Students

##### Approved:

**602.1 Policy**

CEI is committed to promoting the goals of fairness and equity in all aspects of the educational enterprise. Pursuant to Title IX of the Education Amendments of 1972, College of Eastern Idaho prohibits discrimination on the basis of sex in its programs or activities. Specifically, Title IX states that:

*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.*

CEI has jurisdiction over complaints, grievances, or reports under Title IX. The college will respond to and make reasonable efforts to investigate and address complaints or reports about allegedly prohibited conduct, or possible prohibited conduct, make a concerted and reasonable effort to prevent the recurrence of the prohibited conduct, and actively attempt to remediate any adverse effects of such conduct on campus or in college-related programs or activities.

**Jurisdiction:** This policy applies to behaviors that take place on the CEI campus, at college-sponsored events and may also apply off-campus and to actions online when a Title IX Coordinator determines that the off-campus conduct affects a substantial college interest. This interest is defined to include:

* + - * 1. Any situation where it appears that the responding party may present a danger or threat to the health or safety of self or other members of the college community;
				2. Any situation that significantly impinges upon the rights, property or achievements of self or other members of the college community or significantly breaches the peace and/or causes social disorder for the campus; and/or
				3. Any situation that is detrimental to the educational interests of the college.

Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, and/or similar behaviors occurring completely outside of the college’s control (e.g. not on college networks, websites or between college email accounts) will only be subject to this policy when those online behaviors can be shown to cause a substantial on-campus disruption.

**602.2 Definitions**

**Reporting party or complainant**: the person impacted by alleged discrimination.

**Responding party or respondent:** the person who has allegedly engaged in discrimination.

**Equity Resolution Process:** The process whereby College of Eastern Idaho handles equity-based complaints. Details regarding this can be found in Policy 601: Equity Resolution Process.

For the following terms, the legal definition for each term, provided by the State of Idaho, will be used: Cyber-bullying, cyber-stalking, cyber-harassment. For more information, please visit:

* <https://legislature.idaho.gov/statutesrules/idstat/title18/t18ch22/sect18-2202/>
* <https://legislature.idaho.gov/statutesrules/idstat/title18/t18ch79/sect18-7906/>
* <https://legislature.idaho.gov/statutesrules/idstat/title18/t18ch9/sect18-917a/>
* <https://legislature.idaho.gov/statutesrules/idstat/title18/t18ch67/sect18-6710/>

**Title IX Coordinators:** The Executive Director of Human Resources serves as the Title IX Coordinator for Employees. The Dean of Student Affairs serves as the Title IX Coordinator for Students. TheseTitle IX Coordinators collectively oversee implementation of the administration of equity and Title IX for College of Eastern Idaho and the procedures of the policy on Title IX, equal opportunity, harassment and nondiscrimination, as it pertains to each of their areas (students and employees). When necessary, they collaborate on cases that involve both students and employees. Normally, the coordinators will each act independently, but may serve as advisors to each other when requested and may work collaboratively on cases involving both students and employees. Each Title IX Coordinator acts with independence and authority free of conflicts of interest.

Inquiries about and reports regarding this policy and procedure may be made internally to:

**Title IX Coordinator for Employees: Executive Director of Human Resources**

Human Resources Office, Building 5

1600 S 25th E

Idaho Falls, ID, 83404

(208) 535-5303

**Title IX Coordinator for Students: Dean of Student Affairs**

Student Affairs Office, Building 3, Room 311J

1600 S 25th E

Idaho Falls, ID, 83404

(208) 535-5491

**Sexual Harassment:** The Department of Education’s Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC) and the State of Idaho regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. CEI has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.[[1]](#footnote-1)

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, or other physical, verbal or visual conduct of a sexual nature. Such unwelcome conduct involving individuals of the same gender can also be sexual harassment, regardless of sexual orientation. Such conduct constitutes sexual harassment when any of the following are met:

* Submission to the conduct is an explicit or implicit term or condition of employment or of rating or evaluating an individual’s educational development or performance;
* Submission to or rejection of the conduct is used as the basis for employment or educational decisions affecting the individual; and/or
* The conduct has the purpose or effect of interfering with an individual’s work or educational performance or creating an intimidating, hostile, or offensive environment.

Sexual harassment may include explicit sexual propositions, sexual innuendo, suggestive comments, sexually oriented “bantering” or “practical jokes,” jokes about gender specific traits, sexually oriented or obscene language or gestures, displays of foul or obscene printed or visual material, and unwelcome physical contact.

Some examples of possible Sexual Harassment include:

* A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
* A student repeatedly sends sexually-oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus.
* Explicit sexual pictures are displayed in a professor’s office or on the exterior of any door.
* Two supervisors frequently ‘rate’ several employees’ bodies and sex appeal, commenting suggestively about their clothing and appearance.
* A professor engages students in her/his class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She/he probes for explicit details, and demands that students answer her/him, though they are clearly uncomfortable and hesitant.
* An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.
* Male students take to calling a particular brunette student “Monica” because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, “sexual relations” and Weight Watchers.
* A student grabbed another student by the hair, then grabbed her in a sexual way, and put his mouth on her. While this is sexual harassment, it is also a form of sexual violence.

People may harass in ways other than illustrated in the aforementioned examples. Questions from employees may be directed to the Executive Director of Human Resources or, for students, to the Dean of Student Affairs.

**Sexual Misconduct:** CEI has defined sexual misconduct to include any act of non-consensual sexual intercourse, non-consensual sexual contact, sexual exploitation, or relationship violence. Any act of sexual misconduct is a violation of this policy which may result in sanctions including up to termination of employees or expulsion of students. Acts of sexual misconduct can occur regardless of the sex, sexual orientation and/or gender identity of those involved.

**Non-Consensual Sexual Intercourse:** Sexual intercourse is the penetration of the vagina or anus by any body part or object and includes oral copulation (mouth to genital contact) no matter how slight the penetration or contact. When sexual intercourse is committed by force or without consent, it is a serious violation of this policy and the State of Idaho criminal code. Sexual intercourse without consent is commonly referred to as rape.

**Non-Consensual Sexual Contact**: Sexual contact is intentional contact with the breasts, groin, genitals, or mouth, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or any other bodily contact in a sexual manner. When sexual contact is made by force or without consent, it is a serious violation of this policy and the State of Idaho criminal code.

**Sexual Exploitation**: Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and that behavior does not otherwise fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of Sexual Exploitation include, but are not limited to:

* Sexual voyeurism (such as watching a person undressing, using the bathroom, or engaged in sexual acts without the consent of the person observed).
* Invasion of sexual privacy.
* Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent).
* Prostitution.
* Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection.
* Administering alcohol or drugs (such as “date rape” drugs) to another person without his or her knowledge or consent (assuming the act is not completed).
* Exposing one’s genitals in non-consensual circumstances.
* Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

**Relationship Violence** Abuse or violence between partners or former partners in a relationship involving one or more of the following elements:

* Battery that causes bodily injury;
* Purposely or knowingly causing reasonable apprehension of bodily injury;
* Emotional abuse creating apprehension of bodily injury or property damage;
* Repeated telephonic, electronic, or other forms of communication, anonymously or directly, made with the intent to intimidate, terrify, harass, or threaten.

**Force:** Force, in this context, 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 (For example, “Have sex with me or I’ll hit you.” “Okay, don’t hit me, I’ll do what you want.”). Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior. When someone makes it clear that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive and is no longer seductive.

NOTE: Silence or the absence of resistance is not consent. There is no requirement on a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent.

**Consent:** Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. Consent can be withdrawn once given and clearly communicated.

**Incapacitation:** A person is unable to consent when she/he is asleep, unconscious, or is incapacitated due to the influence of drugs, alcohol, or medication so that she/he could not understand the fact, nature, or extent of the sexual activity. A person is incapacitated if she/he lacks the physical and/or mental ability to make informed, rational decisions. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy and is subject to discipline. It is not a valid excuse that a person consented to the sexual activity if either party knew or reasonably should have known that the person was unable to consent to the sexual activity. Incapacitation is not a valid excuse for either party.

**Other Civil Rights Offenses:** In addition to sexual harassment, the following behaviors are also considered form of discrimination and are, therefore, prohibited when the act is based upon the reporting party’s actual or perceived gender.

* Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
* Discrimination, defined as actions that deprive, limit or deny other members of the community of educational or employment access, benefits or opportunities;
* Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
* Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;
* Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship with each other;
* Bullying, defined as repeated acts that are likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally;
* Stalking, defined as repeated following, harassing, threatening, or contacting another by any means whether in person, through mail, or through electronic devices that purposely or knowingly causes emotional distress or would cause a reasonable person to feel fear;
* Any other College policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party’s sex or gender.

**Retaliation:** Retaliation is defined as any adverse action taken against any person who has reported a violation under this policy or any person who supports reporting a violation. Retaliation against an individual for alleging a violation under this policy, supporting a party bringing an allegation, or for assisting in providing information relevant to a claim of harassment is a serious violation of CEI policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to a Title IX Coordinator and will be promptly investigated. CEI is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

**602.3 Procedure**

In order for CEI to respond effectively and to stop instances of discrimination, harassment, sexual misconduct or other related misconduct addressed in this policy, involving students or employees at CEI, all employees of CEI (administrative, faculty, and staff) must report information they possess about discrimination, harassment sexual misconduct, or other related misconduct involving students and employees to a Title IX Coordinator as quickly as possible but within at least 24 hours of acquiring the information. Employees must share all details of the reports they receive. Failure of an employee to report violations of this policy will be subject to disciplinary action, up to and including termination.

Upon receiving a report of alleged or possible discrimination, harassment, or sexual or other related misconduct, CEI will evaluate the information received and determine what further actions will be taken. CEI will follow the procedures described in the Equity Resolution Process (ERP) and Resolution Procedure found in Policy 601. CEI will not wait for the conclusion of a criminal investigation or proceeding before commencing an investigation of a complaint under this policy.

CEI will take immediate steps to protect a complainant of violations of this policy in the educational setting. Individuals who report violations of Policy 602 will be notified of counseling and medical resources, if appropriate, and provided with necessary accommodations such as academic adjustments and support services. A student complainant may need extra time to complete or retake a class or withdraw from a class without academic or financial penalty, cases will be determined on a case-by-case basis by the Dean of Student Affairs.

**Reporting Options**: A reporting party may make a formal report of a violation in a number of ways. Reports may be made directly to a Title IX Coordinator as identified above, any CEI employee that the reporting party trusts, campus security, or online on the CEI website.

Anonymous reporting may also be dropped off at a Title XI Coordinator’s office. If the reporting party chooses to report to someone other than the Title IX Coordinator, the reporting party should understand all details concerning the misconduct, including identifying information, will be shared with the appropriate Title IX Coordinator.

A reporting party has the right, and can expect, to have allegations taken seriously by CEI when formally reported, and to have those incidents investigated and properly resolved through these procedures. Once a report is made, it will be kept confidential and information will be shared on a need-to-know basis. This may include personnel in the Human Resources Office and the Student Affairs Division, investigators, witnesses, and/or the responding party. The circle of people with this knowledge will be kept as small as possible to preserve both the reporting party’s and the responding party’s rights and privacy.

If a reporting party does not wish for an investigation to take place or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator. The Coordinator will evaluate that request in light of his/her duty to also ensure the safety of the campus and comply with federal law. Note that the college’s ability to remedy and respond to a reported incident may be limited if the reporting party wants to remain anonymous or does not wish to proceed with an investigation and/or the Equity Resolution Process. In cases indicating pattern, predation, threat, weapons and/or violence, CEI will likely be unable to honor a request for confidentiality.

**Additional Confidential Reporting**: If a reporting party would like to discuss misconduct but keep the details confidential and not report them to the Title IX Coordinator, there are a number of alternate resources. A reporting party may speak with:

* on-campus licensed professional counselors or staff acting in a mental health counseling services capacity,
* on-campus health service providers and staff acting as health service providers (not as instructors),
* off-campus resources, including licensed professional counselors, local rape crisis counselors, domestic violence resources, local or state assistance agencies, and/or clergy members.

All of the above-listed individuals must maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. CEI offers a free-of-charge counseling center for mental and behavioral health, during normal business hours. CEI employees listed above will submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

**External Reporting**: If you are a student and filed a complaint with the Title IX Coordinator or a designee and believe the response was inadequate, or you otherwise believe you have been discriminated or retaliated against by CEI, you may file a complaint with the Office for Civil Rights (OCR) of the U.S. Department of Education:

Office for Civil Rights

U.S. Department of Education

400 Maryland Avenue, SW

Washington, DC 20202-1100
Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012
TDD#: (877) 521-2172

Email: OCR@ed.gov

Web: [http://www.ed.gov/ocr](http://www2.ed.gov/about/offices/list/ocr/index.html)

If you are an employee, you may file a complaint with the Equal Employment Opportunity Commission (EEOC):

Equal Employment Opportunity Commission

Regional Seattle Field Office

Federal Office Building

909 First Avenue, Suite 400

Seattle, WA 98104-1061

Phone: 1-800-669-4000

Fax: 206-220-6911

TTY: 1-800-669-6820

ASL Video Phone: 844-234-5122

Contact: <http://www.eeoc.gov/contact/>

**Sanctions and Corrective Action**: Violations of this policy will be addressed through the Equity Resolution Process. Consequences for violating this policy are dependent upon the facts and circumstances of each particular situation. The severity of sanctions or corrective action will take into account the frequency and severity of the offense and any history of discriminatory, harassing, or retaliatory conduct. A finding of discrimination, harassment or other conduct in violation of this policy may be cause for disciplinary action, up to and including the discharge of employees and the expulsion of students. CEI may also take appropriate action if it does not find discrimination or harassment but (a) CEI found that the alleged perpetrator engaged in disruptive behavior or (b) to prevent the creation of a hostile environment.

**Federal Timely Warning Obligations**: Parties reporting sexual misconduct should be aware that under the Clery Act, CEI administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. CEI will ensure that a victim’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

**False Allegations**: Deliberately false and/or malicious accusations under this policy, as opposed to allegations, which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

**Amnesty for Reporting Party and Witnesses**: CEI encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, reporting parties or witnesses are hesitant to report to CEI officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that reporting parties choose to report to college officials, and that witnesses come forward to share what they know. To encourage reporting, CEI pursues a policy of offering reporting parties and witnesses amnesty from minor policy violations related to the incident. While policy violations cannot be overlooked, the college may provide educational options, rather than punishment, to those who offer their assistance.

**Parental Notification**: CEI reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, or change in student status or conduct situation, particularly alcohol and other drug violations. The college may also notify parents/guardians of non-dependent students who are under age 21 when alcohol and/or drug policy violations occur. Where a student is non-dependent, CEIwill contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. CEI also reserves the right to designate which college officials have a need to know about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act.

1. Also of relevance is the Office of Civil Rights 2001 statement on sexual harassment, “Revised Sexual Harassment Guidance: Harassment Of Students By School Employees, Other Students, Or Third Parties, Title IX,” the April, 2011 Dear Colleague Letter on Campus Sexual Violence, and OCR’s Questions and Answers on Title IX and Sexual Violence. References may be provided upon request to the Dean of Student Affairs. [↑](#footnote-ref-1)