



**TITLE IX
SEXUAL HARASSMENT AND
NON-DISCRIMINATION
POLICY**

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TITLE IX SEXUAL HARASSMENT AND NON-DISCRIMINATION POLICY

I. SCOPE

This Policy applies to students and employees as follows:

- A. To Students:** Where the Respondent is a student at Indiana Wesleyan University (IWU) at the time of the alleged conduct, the alleged conduct includes Sexual Harassment under this Policy, the alleged conduct occurs in IWU's Education Program and Activity, the alleged conduct occurs against a person in the United States, and the Complainant is participating in or attempting to participate in IWU's Education Program or Activity.
- B. To Employees:** Where the Respondent is an employee at IWU at the time of the alleged conduct, where the alleged conduct includes Sexual Harassment under this Policy, the alleged conduct occurs in IWU's Education Program and Activity, the alleged conduct occurs against a person in the United States, and the Complainant is participating in or attempting to participate in IWU's Education Program or Activity.

Nothing in this Policy shall be construed to limit academic freedom and inquiry, principles of free speech, or the University's educational mission.

Notification: IWU will use University electronic mail (email) for purposes of communication and notification under this Policy.

Dissemination of Policy: This Policy will be made available to all IWU administrators, faculty, staff, and students online at <https://www.indwes.edu/title-ix/> and in IWU student catalog(s) and any employee handbook of operating procedures.

II. POLICY STATEMENT

Indiana Wesleyan University is committed to creating and maintaining a learning and working environment that is free from unlawful discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs or activities; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act, Clery Act, and the Violence Against Women Act (VAWA). Sexual Harassment and Retaliation under this Policy will not be tolerated by IWU and is grounds for disciplinary action, up to and including, permanent dismissal from IWU and/or termination of employment.

III. REASON FOR THE POLICY

IWU takes all reported sexual misconduct and harassment seriously. IWU will promptly discipline any individuals within its control who are found responsible for violating this Policy. Additionally, reported sexual misconduct and harassment that does not meet the definitions and IWU jurisdiction

of this Policy will be referred for review to the appropriate official under the respective Standards of Conduct in compliance with VAWA and Clery Act.

IV. DEFINITIONS

A. Definitions of Prohibited Conduct Under this Policy

(1) Sexual Harassment, as an umbrella category, means conduct on the basis of sex or is sexual in nature that satisfies one or more of the following:

- (a) Quid Pro Quo Harassment:** When an IWU employee requests, offers, or suggests a sexual favor in exchange for a university-provided aid, benefit, or service.
- (b) Hostile Educational Environment:** Unwelcome conduct determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively limits a person's ability to participate in or benefit from the academic, educational, extra-curricular, athletic, or other programs of IWU¹.
- (c) Sexual Assault:** Any sexual act directed against another person without Consent (see below for definition of Consent). Sexual acts include, but are not limited to, oral, anal, or vaginal intercourse or penetration, to any degree, with any part of the body or other object, or requiring another person to penetrate themselves with a body part or an object. Sexual acts also include touching, either directly or through clothing, of the private body parts of another person including, but not limited to, contact with the breasts, buttocks, groin, genitals, or other intimate part of another person's body for the purpose of sexual gratification. Sexual acts also include sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- (d) Dating Violence:** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship will be determined by the length of the relationship, the type of relationship, and the frequency of interaction between the people involved in the relationship. For the purposes of this definition, Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

It should be understood that Dating Violence applies to any pattern of coercive behavior that is used by one person to gain power and control over another. This pattern of behavior may include physical or sexual violence, emotional and psychological intimidation, threats, verbal abuse, stalking, isolation, and economic control.

¹ A severe, pervasive, and objectively offensive assessment includes, but is not limited to, a consideration of the frequency of the offensive conduct, the nature of the unwelcome sexual acts or words, such as whether the harassment was physical, verbal or both; whether the harassment was merely an offensive utterance; and the number of victims involved and the relationship between the parties including, but not limited to, the ages of the harasser and the victim. In evaluating whether conduct is severe, pervasive, and objectively offensive, IWU will look at the totality of the circumstances, expectations, and relationships.

- (e) **Domestic Violence:** means violence or the threat of violence committed by an individual toward another who is a current or former spouse, is or has cohabitated with the individual as an intimate partner, has a child in common with the individual, is similarly situated to a spouse of the individual under state domestic or family violence laws or is an adult or youth who is protected from that individual's acts under the state domestic or family violence laws.

It should be understood that Domestic Violence applies to any pattern of coercive behavior that is used by one person to gain power and control over another. This pattern of behavior may include physical or sexual violence, emotional and psychological intimidation, threats, verbal abuse, stalking, isolation, and economic control.

- (f) **Stalking:** means engaging in a 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; or suffer Substantial Emotional Distress.

Course of Conduct means two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

Reasonable Person means a reasonable person under similar circumstances and with similar identities to the victim.

Substantial Emotional Distress means significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.

(2) **Retaliation** means materially adverse action, intimidation, threats, coercion, or discrimination toward any individual because that individual made a report or formal complaint of Prohibited Conduct, participated in a process outlined by this policy, or chose not to participate in a process for the purpose of interfering with any right or privilege secured by federal law or University policy. Retaliation may be committed by the Respondent, the Complainant, or any other individual or group of individuals. Retaliation does not include vague criticisms, stray remarks, and petty slights that do not rise to the level of adverse action, intimidation, threats, coercion, or discrimination; a good faith pursuit of civil, criminal, or other legal action, even in response to an initial report under this Policy. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The Title IX Coordinator may consolidate an allegation of Retaliation with a Formal Complaint of Sexual Harassment.

(3) **False or Bad Faith Allegations** An individual found to have knowingly made a false complaint or report, or to have knowingly given false information during a process under this Policy, may be subject to disciplinary action, up to and including dismissal from IWU or termination of employment. Charging an individual with a Standards of Conduct violation for knowingly making a false or bad faith allegation during a grievance proceeding under this Policy does not constitute Retaliation prohibited under this Policy.

B. Definitions Related to Sexual Harassment: Consent, Incapacitation, & Reasonable Person

Consent requires voluntary, informed and freely given agreement, communicated through mutually understandable words and/or actions, to engage in a sexual activity at a specific time. Important considerations regarding Consent include:

- Consent to one sexual act cannot be presumed to be consent to another sexual act.
- Consent on a prior one occasion cannot be presumed to be consent on a subsequent occasion.
- Consent to an act with one person cannot be presumed to be consent to an act with any other person.
- Consent cannot be presumed from the existence of a prior or current relationship; there must be real-time consent to sexual activity.
- Consent can be withdrawn or modified at any time, and sexual contact must cease immediately once Consent is withdrawn.
- Consent cannot be inferred from the absence of a “no.”
- Consent cannot be inferred from silence, lack of protest, or lack of verbal or physical resistance.
- An act is without Consent if the Respondent overcomes the Complainant through the use of threats, coercion, continued pressure, physical force, or violence.
- An act is without Consent if the Respondent knows the Complainant is unconscious, unaware that the act is occurring, or is physically unable to resist.
- An act is without Consent if the Respondent knows or reasonably should know that the Complainant has a disability that renders the Complainant unable to understand the nature of the act, resist the act, understand the possible consequences to the Complainant's health or safety, or understand the nature of the relationship between the Respondent and the Complainant.
- An act is without Consent if the Respondent knows that the Complainant participates because the Complainant mistakenly believes that the Respondent is someone else.
- An act is without Consent if the Respondent intentionally impaired the Complainant's ability to appraise or control his or her conduct by administering any substance without the Complainant's knowledge.
- An act is without Consent if the Complainant is under the legal age of consent in the jurisdiction where the alleged misconduct occurred.
- Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the University to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

- The age of Consent in the State of Indiana is 16. Individuals who are 14 or 15 years of age are legally incapable of giving consent to Sexual Intercourse or Sexual Contact by an individual who is four or more years older.

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable. In making this determination, the Decision Maker will consider all of the facts and circumstances the Respondent knew, or reasonably should have known, at the time. In particular, the Respondent's belief is not a valid defense where:

- (1) The Respondent's belief arose from the Respondent's own intoxication or recklessness;
- (2) The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively Consented; or
- (3) The Respondent knew, or a reasonable person should have known that the Complainant was unable to Consent because the Complainant was incapacitated and lacked the ability to knowingly Consent to participate in sexual activity because the Complainant was:
 - asleep or unconscious
 - unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication
 - unable to communicate due to a mental or physical condition.

Incapacitation means that a person lacks the ability to actively agree to sexual activity because the person is asleep, unconscious, under the influence of alcohol or other drugs such that the person does not have control over their body, is unaware that sexual activity is occurring, or their mental, physical, or developmental abilities render them incapable of making rational informed decisions. Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.

A person violates this policy when they engage in sexual activity with another person who is Incapacitated and a Reasonable Person in the same situation would have known that the person is Incapacitated. Incapacitation can be voluntary or involuntary. Signs of Incapacitation may include, without limitation: sleep; total or intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; emotional volatility; combativeness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances.

Reasonable Person means a reasonable person under similar circumstances and with similar identities to the victim.

C. Other Defined Terms

Business Day means any weekday not designated by IWU as a holiday or administrative closure day. When calculating the time period of Business Days specified in this Policy, the Business Day of the event that triggers a time period is excluded.

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Complainants and Respondents are referred to collectively as “parties” throughout this Policy.

Confidential Employee means an individual who will not report any information about an incident to the Title IX Coordinator without the Complainant’s permission.

Disciplinary Sanctions are imposed only after a finding of responsibility through the Formal Resolution Process or an agreement through the informal resolution process.

Education Program or Activity includes locations, events, or circumstances over which IWU exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs. This includes conduct that occurs on IWU property, during any IWU activity, or in any building owned or controlled by a student organization that is officially recognized by IWU.

Formal Complaint means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that IWU investigate the allegation of Sexual Harassment.

Official with Authority means an individual who has the authority to institute corrective measures. Officials with Authority are limited to the following positions at IWU, Title IX Coordinator, Deputy Title IX Coordinators, and Director of Student Conduct and Community Standards.

Remedies are designed to restore or preserve equal access to IWU’s Education Program or Activity. Remedies may include, but are not limited to, the same individualized services as Supportive Measures; however, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. Complainants and Respondents are referred to collectively as “parties” throughout this Policy.

Responsible Employee means any individual who is employed by IWU and not deemed to be a Confidential Employee. IWU requires Responsible Employees to report Sexual Harassment to the Title IX Coordinator promptly upon receiving a report of a Sexual Harassment.

Supportive Measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

Such measures are designed to restore or preserve equal access to IWU’s Education Programs or Activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or IWU’s educational environment, or deter sexual harassment.

Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security, and monitoring of certain areas of the campus, and other similar measures.

V. PROCEDURES

A. **Title IX Coordinator and Key Title IX Officials**

The Title IX Coordinator is the IWU administrator who oversees IWU's compliance with Title IX. The Title IX Coordinator is responsible for administrative response to reports and Formal Complaints of Sexual Harassment. The Title IX Coordinator is available to discuss the resolution processes, coordinate Supportive Measures, explain IWU policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators to facilitate these responsibilities.

Any member of the IWU community may contact the Title IX Coordinator with questions. Title IX Coordinator and Deputy Title IX Coordinators contact information is as follows:

Shelley Isler
Title IX Coordinator
(765) 677-2175
shelley.isler@indwes.edu

Daniel Parham
Deputy Title IX Coordinator, IWU Marion Students
(765) 677-2061
daniel.parham@indwes.edu

Mark Pederson
Deputy Title IX Coordinator, Employees
(765) 677-3412
mark.pederson@indwes.edu

Leslie Zolman
Deputy Title IX Coordinator, National & Global Students
(765) 677-2872
leslie.zolman@indwes.edu

In addition to the Title IX Coordinator, IWU appoints internal or external Investigators, Decision Makers and Informal Resolution Facilitators who have roles in the Formal Resolution Process more fully explained below. The Title IX Coordinator, Deputy Title IX Coordinators, Investigators, Decision Makers, and Informal Resolution Facilitators will receive annual training

in compliance with Title IX. All officials in these roles will not rely on sex stereotypes and will provide impartial investigations and adjudications of Formal Complaints of Sexual Harassment. All materials used to train these officials will be publicly made available on IWU's website in accordance with Title IX requirements.

The Title IX Coordinator, Deputy Title IX Coordinators, Investigators, Decision Makers, and Informal Resolution Facilitators shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

B. Requests for Disabilities Accommodations

IWU is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to these procedures. Those needing such accommodations or support should contact the Title IX Coordinator, who will review the request and, in consultation with the person requesting the accommodation and the appropriate disability services office, determine which accommodations are appropriate and necessary for full participation in the process.

C. Reporting Sexual Harassment and Preservation of Evidence

1. Reporting to IWU

Amnesty: Reporting Sexual Harassment is strongly encouraged at IWU. Thus, it is imperative that Complainants and witnesses share information without fear of potential consequences for policy violations. IWU offers student parties and student witnesses amnesty from certain policy violations but may include educational opportunities for individuals in lieu of a finding of responsibility or punitive sanctions (Also see Amnesty & Good Samaritan Clauses, *Student Handbook*).

Reporting to Title IX Coordinator: Reports of Sexual Harassment may be made to the Title IX Coordinator in any of the following ways, by anyone, at any time: email, phone, online incident report (<https://www.indwes.edu/incidentreport>), mail. Reports may be made to the Title IX Coordinator in person in Maxwell Center, Suite 212, on the Marion, Indiana campus (4201 S. Washington St., Marion, IN) during normal business hours. After Title IX Sexual Harassment has been reported to the Title IX Coordinator, the Title IX Coordinator will promptly offer Supportive Measures to the Complainant, regardless of whether the Complainant was the reporter of the Sexual Harassment.

Reporting to Officials with Authority: The following positions are Officials with Authority: Title IX Coordinator, Deputy Title IX Coordinators, and Director of Student Conduct and Community Standards. If they are notified of Sexual Harassment, they will promptly report such Sexual Harassment to the Title IX Coordinator.

Reporting to Confidential Employees: The Victim Advocate Liaison (765-677-3350), IWU Wildcat Health Center Medical Staff (765-677-2206), Counselors in the Center for Student Success (765-677-2257), the Campus Pastor (765-677-5311), Counselors in the Graduate Counseling Clinic (765-677-2571), and SpiritCare Chaplains (765-677-1830) are Confidential Employees. Reports made to Confidential Employees are considered confidential reports and will not be reported to the Title IX Coordinator without the Complainant's permission and will not constitute actual notice to IWU.

Notification to all other IWU Employees: Employees who are not defined as Officials with Authority or Confidential Employees are required to report Sexual Harassment to the Title IX Coordinator.

Anonymous Reporting: Anonymous reports may be made by telephone, in writing or electronically (<https://www.indwes.edu/incidentreport>) to the Title IX Coordinator. A decision to remain anonymous, however, may greatly limit IWU's ability to stop the alleged conduct, collect evidence, or take action against Parties accused of violating this Policy.

2. Reporting to Law Enforcement

Reports may be filed with local law enforcement agencies. The Title IX Coordinator can assist with contacting law enforcement agencies. Law enforcement investigations are separate and distinct from IWU investigations.

3. Reporting to Outside Agencies

Students and employees may report to external agencies:

- **Students**
[Office for Civil Rights, U.S. Department of Education](#)
[Office for Civil Rights, U.S. Department of Health and Human Services](#)
- **Employees**
[U.S. Equal Employment Opportunity Commission](#)
[Indiana Employees – Indiana Civil Rights Commission](#)
[Ohio Employees – Ohio Civil Rights Commission](#)
[Kentucky Employees – Kentucky Commission on Human Rights](#)
- **Outside Agency Confidential Support and Resources:**
[Rape, Abuse, and Incest National Network \(RAINN\)](#) 800-656-4673
[Life Center Counseling:](#) 765-674-2208
[Marion General Hospital ER:](#) 765-660-6900*
[IU Health Ball Memorial Hospital ER:](#) 765-747-3241*
[Hands of Hope Shelter \(Radiant Health\):](#) 765-664-0701

[Cornerstone Behavioral Health Center](#) (Radiant Health): 765-662-3971

[Fort Wayne Sexual Assault Treatment Center](#): 260-423-2222

[911rape.org](#)

[The National Domestic Violence Hotline](#) 800-799-7233 or Text “START” to 88788

**Facility has Sexual Assault Nurse Examiners (SANE)*

Time Limits on Reporting: There are no time limits on reporting Sexual Harassment to the Title IX Coordinator or IWU. If the Respondent is no longer subject to IWU’s Education Program or Activity or significant time has passed, IWU will have limited ability to investigate, respond and/or provide disciplinary remedies and sanctions.

IWU Federal Reporting Obligations: Certain IWU employees, called Campus Security Authorities, have a duty to report certain incidents of misconduct to comply with the Clery Act. Campus Security Authorities are not required to report personally identifiable information for Clery Act purposes, but statistical information must be sent regarding the type of incident that occurred and its general location (e.g., on or off-campus) for publication in an annual report of crime statistics, called the Annual Security Report. Statistics published in the Annual Security Report help to provide the campus community with a clearer picture of the extent and nature of campus crime, but the statistics do not personally identify Complainants or Respondents. Reports by Campus Security Authorities are not official police reports and do not initiate criminal investigations.

When Sexual Assault, Domestic Violence, Dating Violence, and/or Stalking are reported under the Clery Act, IWU must issue timely warnings for such incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

IWU will not disclose a Complainant’s name and other identifying information in a timely warning but will provide sufficient information for IWU community members to make informed safety decisions in response to potential danger.

4. Preservation of Evidence

IWU recognizes that a Complainant may need time to decide whether to report an incident of Sexual Harassment to the police and/or IWU. The purpose of this section is to provide Complainants with suggestions on preserving evidence while they decide whether to report an incident.

IWU encourages Complainants, as soon as possible after experiencing Sexual Assault to take steps to preserve evidence such as:

- Have a forensic sexual assault nurse examination performed as soon as possible after the incident, but no later than 72-96 hours after the incident;
- When possible, prior to having a forensic sexual assault nurse examination performed, avoid changing clothing, bathing, showering, using a douche, using the bathroom, brushing one’s teeth, drinking liquids, washing one’s hands or face, or combing one’s hair;

- Preserve any clothing, sheets, or other materials (items containing bodily fluids should be stored in cardboard boxes or paper bags);
- Preserve or capture electronic communications such as text messages, e-mails, social media posts or exchanges (e.g., Snapchat, Facebook, Twitter);
- Preserve or capture video, audio (e.g., voice mail messages), or photographs, including those stored on smartphones or other devices; and,
- Preserve any other physical, documentary, and/or electronic data that might be helpful to an Investigator.

D. Initial Response to Reported Sexual Harassment

Upon receipt of a report of Sexual Harassment, the Title IX Coordinator will promptly contact the Complainant, regardless of whether the Complainant was the individual who initiated the report. During the initial contact with the Complainant, the Title IX Coordinator will:

- Provide the Complainant with notice of their rights and options;
- Explain the process for filing a Formal Complaint;
- Explain the Resolution Processes;
- Discuss the availability of Supportive Measures regardless of whether a Formal Complaint is filed;
- Consider the Complainant's wishes with respect to Supportive Measures.

E. Emergency Removal and Administrative Leave

Emergency Removal: At any time after the Title IX Coordinator is on notice of Sexual Harassment, IWU may remove a Respondent on an emergency basis. IWU will only conduct an emergency removal after:

- (1) Undertaking an individualized safety and risk analysis,
- (2) Determining that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal, and
- (3) Providing the Respondent with notice and an opportunity to challenge the decision to the Title IX Coordinator, within two (2) Business Days following the removal.

Administrative Leave: IWU may place an employee Respondent on administrative leave during the pendency of the Formal Resolution Process in this Policy.

F. Formal Complaint

IWU will investigate all allegations of Sexual Harassment in a Formal Complaint.

Filing a Formal Complaint: A Formal Complaint must:

- (1) Contain an allegation of Sexual Harassment against a Respondent;
- (2) Request that IWU investigate the allegation; and
- (3) Be signed by the Complainant or Title IX Coordinator.

In limited circumstances, if a Complainant does not sign a Formal Complaint, the Title IX Coordinator may sign a Formal Complaint. In determining whether to sign a Formal Complaint, the Title IX Coordinator will consider factors that include but are not limited to:

- Whether there have been other reports of Sexual Harassment or other relevant misconduct concerning the same Respondent whether or not the incidents occurred while the Respondent was an IWU student or employee;
- Whether the Respondent threatened further Sexual Harassment or other misconduct against the Complainant or others;
- Whether the alleged Sexual Harassment was committed by multiple perpetrators;
- The nature and scope of the alleged Sexual Harassment including whether the Sexual Harassment was perpetrated with a weapon;
- The ages and roles of the Complainant and the Respondent;
- Whether IWU can pursue the investigation without the participation of the Complainant (e.g., whether there are other available means to obtain relevant evidence of the alleged Sexual Harassment such as security cameras or physical evidence);
- Whether the report reveals a pattern of perpetration (e.g., perpetration involving illicit use of drugs or alcohol) at a given location or by a particular group.

Consolidation of Formal Complaints & Other Conduct Violations: The Title IX Coordinator may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent or by more than one Complainant against one or more Respondents where the allegations arise out of the same facts or circumstances.

Alleged violations of the student or employee Standards of Conduct that rise from the same events as alleged Sexual Misconduct under this Policy may be investigated and resolved under the Formal Resolution Process in this Policy unless the Sexual Harassment has been dismissed under Section G. of this Policy.

G. Dismissal of a Formal Complaint

Required Dismissal: The Title IX Coordinator will dismiss a Formal Complaint for purposes of Sexual Harassment if:

- (1) The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined in this Policy even if proved;
- (2) The conduct alleged did not occur in IWU's Education Program or Activity; or
- (3) The Conduct alleged in the Formal Complaint did not occur against a person in the United States.

Dismissal of a Formal Complaint does not prevent action under other provisions of the IWU's policies and procedures. If a Formal Complaint is dismissed under this section and the Respondent is a student, the matter will be sent to the appropriate IWU office to determine whether the matter will be pursued under the IWU Standards of Conduct.

If a Formal Complaint is dismissed under this section and the Respondent is an employee, the matter will be sent to the Executive Director for Human Resources for review. The Executive Director for Human Resources will decide whether the matter will be pursued under the IWU Standards of Conduct.

Permissive Dismissal: The Title IX Coordinator may dismiss a Formal Complaint or any allegations within the Formal Complaint, if at any time during the investigation or hearing:

- (1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations within the Formal Complaint
- (2) The Respondent is no longer enrolled or employed by IWU
- (3) Specific circumstances prevent IWU from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations within the Formal Complaint

Appeal of Dismissal: Either Party may appeal the dismissal of a Formal Complaint or any allegations therein. See Section O. of this Policy for basis and process for appeals.

H. Notice of Allegations

Upon receipt of a Formal Complaint that is not otherwise dismissed, the Title IX Coordinator will provide Notice of Allegations to the Parties who are known. The Notice of Allegations will include:

- (1) Notice of the Party's rights and options
- (2) Notice of IWU's Informal Resolution Process and options
- (3) Notice of IWU's Formal Resolution Process
- (4) Notice of the allegations of Sexual Harassment including:
 - a. The identities of the Parties involved in the incident, if known,
 - b. The conduct allegedly constituting Sexual Harassment, and
 - c. The date and location of the incident, if known.
- (5) Notice that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Formal Resolution Process.
- (6) Notice that the Parties may have an Advisor of their choice, who may be, but is not required to be an attorney, and that the Advisor may inspect and review evidence as explained in Section K. of this Policy.
- (7) Notice of the IWU Standard of Conduct provision that prohibits knowingly making false statements or knowingly submitting false information.

The Notice of Allegations will be updated, and written notice provided to the Parties if at any time during the investigation, IWU decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Allegations.

I. Informal Resolution Process

At any time after a Formal Complaint has been signed and before a determination regarding responsibility has been reached, the Parties may voluntarily agree to participate in an Informal

Resolution facilitated by IWU, which does not involve a full investigation and adjudication. The goal of Informal Resolution is to conclude the matter to the satisfaction of the Parties quickly and confidentially and to protect the safety of all Parties and IWU's educational environment. Types of Informal Resolution include, but are not limited to, mediation, facilitated dialogue, conflict coaching, and restorative justice and resolution by agreement of the Parties.

Informal Resolution Notice: Prior to entering Informal Resolution, IWU will provide the Parties with a written notice disclosing:

- (1) The allegations;
- (2) The requirements of the Informal Resolution Process, including the right of any Party to withdraw from Informal Resolution and resume Formal Resolution and the circumstances which preclude Parties from resuming a Formal Complaint arising from the same allegations;
- (3) Consequences resulting from Informal Resolution, including that the records will be maintained for a period of seven (7) years but will not be used by Investigators or Decision Makers if the Formal Resolution Process resumes.

Informal Resolution Agreement: Prior to entering Informal Resolution, the Parties must voluntarily agree, in writing, to the use of the Informal Resolution Process.

Informal Resolution Availability: The Informal Resolution Process is not permitted to resolve allegations that an employee committed Sexual Harassment against a student.

Informal Resolution Timeframe: Informal Resolutions of a Formal Complaint will be concluded within 45 days of notice to IWU that both Parties wish to proceed with the Informal Resolution process. Such notice that the Parties wish to proceed with an Informal Resolution process will "pause" the counting of the time to conclude the Formal Resolution Process of this Policy, should the Informal Resolution process fail, and the Parties continue with the Formal Resolution Process.

Informal Resolution Documentation: Any final resolution pursuant to the Informal Resolution process will be documented and kept for seven (7) years. However, no recording of the Informal Resolution process will be made, and all statements made during the Informal Resolution process will not be used for or against either Party (and the Decision Maker and/or Appellate Decision Maker may not consider any such statement made during Informal Resolution) should the Parties resume the Formal Resolution Process. Failure to comply with an Informal Resolution Agreement may result in disciplinary action.

J. Formal Resolution Process

The Formal Resolution Process within this Policy is designed to treat Complainants and Respondents equitably. Remedies are provided to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent and Disciplinary Sanctions are not imposed against a Respondent prior to the completion of the Formal Resolution Process.

General Formal Resolution Process Information:

Burden of Proof and Burden of Gathering Evidence: All investigations and proceedings, including hearings, relating to Sexual Harassment will be conducted using a “preponderance of the evidence” (more likely than not) standard. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on IWU, not the Parties.

Presumption of Not Responsible: The Respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the Formal Resolution Process.

Time Frames for Formal Resolution Process: IWU strives to complete the Formal Resolution Process within one hundred and twenty (120) Business Days. Temporary delays and/or extensions of time within this Policy may occur for good cause. Written notice will be provided to the parties of the delay and/or extension of time with explanation of the reasons for such action. Examples of good cause for delay/extensions include but are not limited to considerations such as the absence of a Party, a Party’s Advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

Medical Records: IWU will not access, consider, disclose, or otherwise use Party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless IWU obtains that Party’s voluntary, written permission to do so for the Formal Resolution Process within the Policy.

Privileged Information: IWU will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.

Notice of Meetings, Interviews, and Hearings: Parties and witnesses will be provided with notice of any meeting, interview, and/or hearing with sufficient time (approximately three (3) days) to prepare to participate. This notice will include the date, time, location, participants and purposes of the meeting, interview and/or hearing.

Right to an Advisor: Throughout the Formal Resolution Process, each Party has the right to be accompanied at any meeting or hearing by an Advisor of their choice. The Advisor may be any person, including an attorney. A Party may decline to use an Advisor for any or all stages of the formal or informal resolution process, with the exception of the Live Hearing, where any questioning of the other party must be conducted by the party's Advisor. If a party does not have an Advisor for the hearing, the University will provide an Advisor, free of charge, who may be, but is not required to be, an attorney, to attend the Live Hearing and conduct questioning on behalf of that Party.

During the investigation, the Advisor's role is limited to assisting, advising, and/or supporting a Complainant or Respondent. An Advisor is not permitted to speak for or on behalf of a Complainant or Respondent or appear in lieu of a Complainant or Respondent.

K. Investigation of Formal Complaint

The Role of the Investigator: After receiving a Formal Complaint and issuing a Notice of Allegations, IWU will appoint an Investigator to conduct an investigation. The Investigator will be trained to create an Investigative Report that fairly summarizes relevant evidence. The Investigator will conduct interviews, ask the Parties to provide evidence and identify possible witnesses. No unauthorized audio or video recording of any kind is permitted during investigation meetings. The Investigator will have audio recordings of interviews; all involved parties will be made aware of any audio recording. Transcripts of interview recordings will be made available to the parties.

The Investigator will consider all relevant information—including information tending to show the Respondent's responsibility for Sexual Harassment and information tending to show the Respondent is not responsible—from the Parties or from other sources, including University records.

Investigation Timeframe: The Investigator will attempt to conclude the investigation within 90 Business Days of the filing of a Formal Complaint. The Parties will be provided with updates on the progress of the investigation, as needed.

Opportunity to Provide Evidence and Present Witnesses: Each Party will be provided an equal opportunity to provide evidence to the Investigator and present possible witnesses for the Investigator to interview. Witnesses can include fact witnesses, expert witnesses, and relevant character witnesses.

Opportunity to Inspect, Review & Respond to the Investigation Record: The Investigator will create an Investigation Record consisting of all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, regardless of whether the Investigator thinks the information is relevant. Each Party and their Advisor (if any) will be provided with an electronic copy of the evidence for inspection and review through a file-sharing platform that provides the Parties with read-only access and maintains the confidentiality of the transmitted data. The Parties will have ten (10) business days to review and submit a written response to the Investigator regarding the evidence. The Parties' response will be included in the Investigation Record. The Investigator will consider the written responses prior to finalizing an Investigative Report. All evidence in the Investigation Record will be available to the Decision Makers, Parties, and their Advisors, to use during the Live Hearing, including for purposes of cross-examination.

All evidence shared with Parties and their Advisors must be kept confidential. Evidence must only be used for the purposes of these procedures and must not be distributed or disclosed. IWU may restrict further access to the Investigation Record and seek appropriate sanctions against a Party or

an Advisor who violates a confidentiality obligation under these procedures. The Investigation Record will remain available to the Parties and their Advisors until the conclusion of the Formal Resolution Process.

Investigative Report: Following the opportunity to inspect and review the Investigation Record, the Investigator will create an Investigative Report that:

- Identifies the allegations potentially constituting Sexual Harassment and the Respondent's responses to each allegation;
- Describes the procedural steps taken from the receipt of the Formal Complaint through the conclusion of the investigation, including notifications to the Parties, interviews with Parties and witnesses, site visits, and methods used to gather other evidence; and
- Fairly summarizes relevant evidence obtained during the investigation that is directly related to the allegations raised in the Formal Complaint.

The Investigator will simultaneously distribute the Investigative Report to the Title IX Coordinator and to each Party and each Party's Advisor, if any, for their review and written response to the Decision Makers. The Investigator will include the Investigative Report as part of the Investigation Record.

Opportunity to Inspect, Review & Respond to the Investigative Report: The Parties will have ten (10) business days to review the Investigative Report and submit a written response to the Title IX Coordinator. The Parties' response will be included in the Investigation Record. All evidence in the Investigation Record will be available to the Decision Makers, Parties, and their Advisors, to use during the Live Hearing, including for purposes of cross-examination.

L. Live Hearing

After the investigation, IWU will provide for a live hearing for all Formal Complaints of Sexual Harassment that have not been dismissed per Section G. or resolved by Informal Resolution under Section I. of this policy. The Title IX Coordinator will schedule a Live Hearing and will provide a written Notice of Hearing to each Party and their Advisor. The Notice will include the date, time, name of the Decision Makers, names of all participants, and the location (virtual or in-person). The Live Hearing will take place at least 15 business days after the Investigative Report is sent to the Parties and should take place within 45 calendar days after the Investigative Report is delivered unless it is delayed by unavoidable circumstances, such as the timing of semester breaks, the unavailability of the Parties, Decision Makers, Investigator, or key witnesses. IWU will provide for the Live Hearing to occur with the Parties physically separated with technology enabling the Decision Makers and Parties to simultaneously see and hear the other Party or witness answering questions.

The Live Hearing is an opportunity for the Parties to address the Decision Makers. The Parties may address any information in the Investigation Record including the Investigative Report and supplemental statement submitted in response to the Investigative Report. IWU will make all

evidence directly related to the allegations, as shared in the Investigation Record, available to the Parties at the Live Hearing, including for the purposes of cross-examination.

Recording of the Hearing: IWU will create an audio or audiovisual recording of all live hearings and make the recording available to the Parties for review.

Decision Makers: IWU will appoint a panel of Decision Makers and will designate a Lead Decision Maker. The Decision Makers may be comprised of IWU employees and external individuals designated by IWU. Additionally, the panel of Decision Makers will include:

1. A representative from the appropriate Student Development office if the Respondent is a student and the alleged Sexual Harassment occurred within the context of the Respondent's role as a student.
2. A representative from Human Resources if the Respondent is an employee, including student employees, and the alleged Sexual Harassment occurred within the context of the Respondent's role as an employee.

The Decision Makers will be impartial and without a conflict of interest. The Decision Makers will be trained on issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking; the scope of IWU's education program or activity; how to conduct a hearing and adjudicate in a manner that is fair and impartial by avoiding prejudgment of the facts at issue; and on issues of relevance of questions and evidence.

The role of the Decision Makers is to provide all Parties with an equitable opportunity to be heard, to make relevance determinations, and to objectively evaluate all relevant evidence in order to reach a full and fair determination as to responsibility and imposition of any sanction, should there be a finding of responsibility. The Decision Makers will consider the Investigative Report, all evidence contained in the Investigation Record, and the information presented at the Live Hearing. The Decision Makers will determine whether there is sufficient evidence, by a Preponderance of the Evidence, to determine whether the Respondent is responsible for the alleged Policy violation(s) at issue. The Decision Makers may reach credibility determinations but may not base credibility determinations on a person's status as a Complainant, Respondent, or witness. Where a Complainant or Respondent declines to participate in the Live Hearing, the Decision Makers may not make an adverse inference against that Party.

The Title IX Coordinator and Investigator may not serve as a Decision Maker.

Challenge to a Decision Maker: Either Party may challenge the appointment of a Decision Maker based on conflict of interest or bias by writing to the Title IX Coordinator no less than five (5) Business Days prior to the Live Hearing.

Hearing Facilitator: IWU may designate a Hearing Facilitator to coordinate the Live Hearing, including, but not limited to, coordination and scheduling of the Live Hearing; the logistics of physical or virtual rooms for Parties and/or witnesses, including separation of the Parties; ensuring all technology is working appropriately; ensuring the Parties have access to electronic document; distributing materials; etc. The Hearing Facilitator may also be the Title IX Coordinator. The

Hearing Facilitator may invite the Parties and their Advisors, separately, to a meeting prior to the Live Hearing to review the hearing process for the purpose of ensuring a smooth hearing. This meeting is separate from the pre-hearing conference discussed below.

Pre-Hearing Matters: To streamline the hearing process, the Lead Decision Maker may request the submission of questions prior to the Live Hearing through electronic submission and/or a pre-hearing conference.

- (1) **Pre-Hearing Submission of Questions:** The Lead Decision Maker may request the Parties submit questions, in writing, prior to the hearing. This submission does not preclude the Advisor from asking additional questions live during the hearing. The Lead Decision Maker may allow for the pre-hearing submission of questions regardless of whether a pre-hearing conference occurs.
- (2) **Pre-Hearing Conference:** The Lead Decision Maker may hold a pre-hearing conference to further streamline the Live Hearing, especially in complex cases involving multiple Complainants, Respondents, and/or a significant number of witnesses. During the pre-hearing conference, Parties and their Advisors will meet with the Lead Decision Maker separately to review written questions previously submitted and/or to submit, in writing, any questions they wish to ask during the Live Hearing so that the Lead Decision Maker can be prepared to respond to the relevancy of said questions during the Live Hearing. The Lead Decision Maker may discuss any preliminary relevancy determinations regarding submitted questions and/or discuss alternative ways in which to ask questions; however, the Lead Decision Maker will make any final relevancy determinations in real-time, orally, during the Live Hearing. This conference does not preclude the Advisor from asking additional questions during the Live Hearing.

At the pre-hearing conference, the Lead Decision Maker may also hear arguments regarding the relevance of the evidence identified in the Investigative Report as relevant or not relevant, and/or directly related to the allegations.

Participants in the Live Hearing: Participants at the Live Hearing include the Decision Makers, the Investigator who conducted the investigation, the Parties, Advisors to the Parties, witnesses and anyone providing authorized accommodations. In addition, IWU may have a Hearing Facilitator present. Any witnesses who participate in the Live Hearing must have been interviewed first by the Investigator or have provided a written statement or answered questions from the Investigator in writing. The Title IX Coordinator will provide the names of all persons participating in the Live Hearing to the Parties at least seven (7) days prior to the Live Hearing.

Advisor's Role at the Live Hearing: Each Party must have an Advisor present at the Live Hearing. If a Party does not have an Advisor, IWU will appoint the Party an Advisor without fee or charge. The Advisor's role is limited to supporting, advising, and conducting questioning (cross-examination) of participants. The Advisor may not provide the opening or closing statement and may not provide answers or responses on behalf of a Party. Advisors are required to follow rules of decorum enforced by the Lead Decision Maker. Failure to follow the rules of decorum by an Advisor may result in removal of an Advisor from the Live Hearing.

M. Hearing Process and Phases

The Decision Makers have the discretion to determine the format for the hearing and its deliberations. Typically, the Complainant and Respondent will have an opportunity to provide a brief opening statement to the Decision Makers. Each Party will then have an opportunity to address the Decision Makers and respond to questions by the Decision Makers, or as described below, the other Party's Advisor. The Decision Makers will also hear from relevant witnesses, including the Investigator. Each Party will have the opportunity to question the other Party, the witnesses, and the Investigator through their Advisor directly, orally, and in real time.

Only relevant questions may be asked of a Party or witness. Before a Complainant, Respondent, or witness responds to a question, the Lead Decision Maker will first determine whether the question is relevant and briefly explain any decision to exclude a question as not relevant as defined above. If a Party or witness does not submit to questioning by the other Party's Advisors at the hearing, the Decision Makers may rely on statements made by that Party or witness in reaching a determination regarding responsibility, after assessing the relevance of each statement and weighing the reliability of the statement against the fact that the statement was not further tested through questioning at a hearing. The Decision Makers may not draw any inference from the decision of a party or witness to not participate at the hearing.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

After all Parties and witnesses have been heard, the Parties will have an opportunity to provide a brief closing statement.

N. Determination Regarding Responsibility

After the Live Hearing, the Decision Makers will deliberate and determine whether there is sufficient information, by a Preponderance of the Evidence, to support a finding of responsibility for a violation(s) of the Policy. The Decision Makers will prepare a written decision and rationale, including the finding of responsibility or non-responsibility, and, if applicable, the sanction and rationale. The Complainant and Respondent will receive simultaneous written notification of the outcome (typically via e-mail to each party's University e-mail address) from the Title IX Coordinator or their designee, including:

- Identification of the allegations potentially constituting Sexual Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of this Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions that IWU imposes on the Respondent,

and whether remedies designed to restore or preserve equal access to IWU's education program or activity will be provided by IWU to the Complainant²; and

- The procedures and permissible basis for the Complainant and Respondent to appeal.

O. Appeals

A Complainant or Respondent may appeal the decision of the Decision Makers or the dismissal of a Formal Complaint or any allegations therein, on one or more of the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could materially affect the outcome;
- The Title IX Coordinator, Investigator, and/or Decision Makers had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

The Complainant or Respondent may appeal the outcome within five (5) business days of receiving the Determination Regarding Responsibility or the Notice of Dismissal by submitting a written appeal to the Title IX Coordinator in person or via e-mail.

Appeal Procedures: If an appeal is submitted, the Title IX Coordinator will implement the following procedures equally for both Parties:

- (1) Ensure the appeal is timely and meets one or more of the grounds for appeal. If the appeal is not timely or does not meet one or more of the grounds for appeal, the Title IX Coordinator will notify the appealing Party in writing and no further action will be taken.
- (2) Notify the non-appealing Party in writing and provide them with a copy of the appeal and provide them with five (5) Business Days from receipt of the notification of appeal to submit a written statement in response to the appeal.
- (3) Select an Appeal Decision Maker who is a neutral party, not previously associated with the underlying matter or Parties, and has appropriate training and experience resolving Title IX appeals.
- (4) Notify the Parties the identity of the Appeal Decision Maker and the timeframe by which the appeal will be finalized.

Upon receiving the appeal, the Appeal Decision Maker may take up to twenty (20) Business Days to consider the matter and issue a written decision simultaneously to both Parties describing the result of the appeal and the rationale for the result which can be one of the following:

- Affirm the findings, disciplinary decision and/or the sanction(s);
- Modify the findings, disciplinary decision and/or sanction(s); or
- Remand the process back to the hearing stage for the Decision Makers to remedy any procedural irregularity or consider any new evidence;

The decision by the Appeal Decision Maker is final. No further appeals are available.

² The Title IX Coordinator is responsible for the implementation of any remedies.

VI. SANCTIONS

Sanction for violations of Sexual Harassment under this Policy and violations of other conduct policies consolidated with a Formal Complaint may include:

Student sanctions include: Essays/Letters of Apology, required training, verbal warnings, disciplinary warnings, citizenship probations, suspensions, dismissals, expulsions, community service, interim restrictions, interim/long-term residence hall suspensions, open house/visitation restrictions, restitution, referral for counseling and/or assessment, substance use assessments, transcript notation and/or notification to other institutions, and withholding or delaying the conferral of a degree.

Student-employees who are reported to have engaged in Prohibited Conduct in their employment capacity may be subject to sanctions both in connection with their employment and in connection with their student status, as appropriate under applicable processes.

Employee sanctions include: Required training, verbal corrective action, written corrective action, disciplinary probation, adjustment of supervisory or evaluative responsibilities, referral for counseling and/or assessment, suspension of employment with or without pay, and termination of employment.

VII. RELATED INFORMATION

D. Consensual Relationships

IWU maintains a Consensual Relationships policy in the Employee Handbook and the Family and Personal Relationships policy within the Code of Conduct that governs whether or not consensual relationships between regular employees and students, and between supervisors and subordinate employees is permitted.

E. Modification and Review of this Policy

IWU reserves the right to modify this Policy to consider applicable legal requirements. IWU will regularly review this Policy to determine whether modifications should be made.

F. Other University Policies

This Policy takes precedence over other University policies and procedures concerning Sexual Harassment under Title IX in the event of a conflict.

G. Recordkeeping

IWU will maintain all of the documentation related to reports of Sexual Harassment, Formal Complaints, the Informal Resolution Process, and Formal Resolution Process for at least seven (7)

years in accordance with state and federal records laws and requirements. Certain records may be retained longer in IWU's sole discretion, including for active employees. The documentation of all records is private and confidential to the extent possible under law. Student records of the Formal Resolution Process are disciplinary records under Family Education Rights and Privacy Act (FERPA). Employee records of the Formal Resolution Process are subject to applicable state laws and included in the employee's official employment record.

H. Religious Educational Institution

IWU is a private, evangelical Christian university that qualifies as a religious educational institution entitled to protection under the U.S. Constitution and utilizes statutory exemptions under Title IX, Title VII, and relevant state law. Nothing in this Policy will undermine the integrity of IWU's status as a religious educational institution. Conduct by a member of the IWU community that is in conformity with IWU's Christian beliefs (as those beliefs are determined by IWU and The Wesleyan Church) will not be deemed to violate this Policy regardless of the definitions of Prohibited Conduct. Nothing in this Policy requires IWU to take any action, or fail to take any action, inconsistent with its religious beliefs.