

# **Memorandum of Understanding**

The purpose of this Memorandum of Understanding between United Faculty of Central (the “Union”), and Central Washington University (the “University”), originally adopted January 8, 2021, is to memorialize an agreement to modify their September 1, 2021 through August 31, 2023 collective bargaining agreement (“the Agreement”).

## **Recitals**

As an institution of higher education that benefits from federal funding, the University is obligated to comply with Title IX of the Education Amendments Act of 1972. Effective August 14, 2020, and following the unsuccessful lawsuits filed by various state Attorneys General to enjoin the new regulations, the U.S. Department of Education (DOE) adopted new final regulations that materially changed how claims of sexual harassment under Title IX are processed. See 34 C.F.R. § 106. As required by Title IX, the University has changed its policies and procedures to comply with the new regulations relating to processing, investigating, and adjudicating sexual misconduct allegations.

The new DOE regulations include detailed provisions applicable to the filing of complaints alleging sexual harassment/violence actionable under Title IX, the investigation of those complaints, the procedure for making disciplinary decisions based on a Title IX complaint, and the process for the appeal of any such discipline. In a situation where a faculty member is accused of sexual harassment/violence in a manner actionable under Title IX, the new regulations require the University to follow processes that conflict with certain provisions of the Agreement. Because the University is obligated to adhere to the regulatory requirements in such circumstances, the parties have adopted this Memorandum to address the preemptive effect of the regulations where they conflict with the Agreement.

## **Agreement**

Now, therefore, the parties agree as follows:

1. Article 26 of the Agreement, Disciplinary Action/Just Cause, is amended to include the following provisions:

26.8 Title IX of the Education Amendments Act of 1972 (“Title IX”)

26.8.1. Pursuant to Title IX, institutions of higher education are required to develop policies and procedures to prevent and respond to sexual harassment, to train employees and students in their rights and responsibilities under Title IX, and to properly process, investigate, and adjudicate sexual harassment allegations. The Employer’s policies and procedures incorporate specific requirements of the federal law and regulations governing processing of complaints, conducting investigations and adjudications, imposing disciplinary

sanctions, and resolving appeals. Where provisions of this Agreement relating to discipline and appeals of discipline decisions conflict with policies and procedures adopted by the University to comply with federal laws and regulations, the University policies and procedures preempt the conflicting provisions of this Agreement.

26.8.2 Sections 26.1 (just cause) and 26.2 (progressive discipline) shall apply to disciplinary determinations made in any Title IX proceeding contemplated by the Policy and Procedures referenced in Section 26.8.1 above. Specifically, the Decision-Maker at a Title IX hearing will consider the employee's disciplinary record as well as the principles of just cause before determining the appropriate discipline, if any. Likewise, the failure to appropriately apply Sections 26.1 and 26.2 in making a disciplinary determination shall be permissible bases for an appeal of the determination by the Decision-Maker.

26.8.3 Claims of sexual misconduct where the conduct does not meet the definition of sexual harassment under Title IX can still be investigated by CWU under other applicable state or federal law or CWU's internal policies/procedures.

26.9 Disciplinary decisions reached through the University's Title IX policies described in Section 26.8 above must be appealed pursuant to those policies, and may not be challenged through the grievance or complaint procedures set forth in Article 29 – Grievance and Complaint Procedure.

2. The terms and conditions of this Memorandum will remain in effect unless modified by written agreement of the parties, should there be a revision to the relevant piece of Title IX of the Education Amendments Act of 1972.

3. This Memorandum will take effect as of the date it is fully executed by the parties, and will expire on the effective date of a successor to the Agreement.

Signed and Dated this 16<sup>th</sup> day of December, 2021.

Central Washington University

United Faculty of Central

\_\_\_\_\_  
By Mr. Dan Baker  
Title: Provost

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By G. C. Barlett  
Title: President, United Faculty of Central