



Interim Title IX Sexual Harassment Policy & Procedures

I. Policy Overview

On May 6, 2020, the United States Department of Education issued new regulations, effective August 14, 2020, defining sexual harassment under Title IX of the Education Amendments of 1972 (“Title IX”) to include three categories of misconduct on the basis of sex that occur within the University’s education programs or activities: quid pro quo harassment by an employee; severe, pervasive, and objectively offensive unwelcome conduct of a sexual nature; and Sexual Assault, Dating Violence, Domestic Violence, or Stalking as defined under the Clery Act and VAWA. While Wheaton College prohibits all forms of discrimination and harassment, including sexual misconduct, this policy applies only to Sexual Harassment under Title IX as defined below. This Policy sets forth Wheaton College’s obligations under Title IX of the Educational Amendments of 1972 and applicable regulations. Further information about Title IX and sex discrimination in education is available from the U.S. Department of Education’s Office of Civil Rights (John C. Kuczynski Federal Building, 230 S. Dearborn Street, 37th Floor, Chicago, IL 60604, Tel: (312) 730-1560, TDD: (877) 521-2172), Email: OCR.Chicago@ed.gov).

II. Accessibility

Wheaton College is committed to making the processes described in this Policy accessible to all members of the Wheaton College community, including providing reasonable accommodations to persons with disabilities. To learn more about the policies and procedures specific to requesting reasonable accommodations, please visit the “Accessibility Resources” section of the [Learning & Accessibility Services webpage](#) (students) or the [Employee Handbook](#) (faculty and staff).

III. The Role of the Title IX Coordinator(s)

The College’s Title IX Coordinator(s) are responsible for the coordination of training, education, communications, and the administration of the procedures for the handling of suspected or alleged violations of this Policy.

The Title IX Coordinator(s) and their contact information are as follows:

Title IX Coordinator: Diane Padilla, Student Services Building #211,
diane.padilla@wheaton.edu, (630) 752-7885

Deputy Title IX Coordinator for Students: Carrie Williams, Student Services Building #214, carrie.williams@wheaton.edu, (630) 752-5797

Deputy Title IX Coordinator for Employees: Karen Tucker, Blanchard #154,
karen.tucker@wheaton.edu, (630) 752-5060

IV. Scope

This Policy applies to all students, faculty, and staff who experience prohibited sexual harassment in the College’s education programs or activities. This includes locations, events, or

circumstances over which the College exercised substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College. The College has other policies and procedures that may be applicable if the conduct does not meet the definition of prohibited sexual harassment under this Policy or otherwise fall within the scope of this Policy. More information on these policies and procedures can be found in the College's Nondiscrimination Policy or at www.wheaton.edu/titleixandequity.

V. Prohibited Conduct

In accordance with its obligations under the Title IX, the College prohibits sexual harassment, which is conduct on the basis of sex that satisfies one or more of the following definitions:

- A. **Quid Pro Quo Conduct.** An employee conditions the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
- B. **Unwelcome Conduct.** Unwelcome conduct that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education programs or activities; or
- C. **Sexual Misconduct.** Sexual assault/violence, dating violence, domestic violence, and/or stalking, defined as follows:
 - 1. **Sexual Assault/Violence.** An offense classified as a forcible or nonforcible sex offense. This category of prohibited conduct includes the following:
 - a. **Sex Offenses**—Any sexual act directed against another person, without the consent of the victim/survivor including instances where the victim/survivor is incapable of giving consent.
 - b. **Rape**—(Except Statutory Rape) The actual or attempted sexual intercourse with a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim/survivor is incapable of giving consent because of their temporary or permanent mental or physical incapacity.
 - c. **Sodomy**—Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim/survivor is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity.
 - d. **Sexual Assault With An Object**—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim/survivor is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity.
 - e. **Fondling**—The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim/survivor is

incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity.

- f. **Incest**—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - g. **Statutory Rape**—Nonforcible sexual intercourse with a person who is under the statutory age of consent.
- D. **Dating Violence.** Violence committed by a person— (A) who is or has been in a social relationship of a romantic or intimate nature with the victim/survivor; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.
- E. **Domestic Violence.** A felony or misdemeanor crimes of violence (determined by local municipality) committed by a current or former spouse or intimate partner of the victim/survivor, by a person with whom the victim/survivor shares a child in common, by a person who is cohabitating with or has cohabitated with the victim/survivor as a spouse or intimate partner, by a person similarly situated to a spouse of the victim/survivor under the domestic or family violence laws of the state of Illinois or by any other person against an adult or youth victim/survivor who is protected from that person’s acts under the domestic or family violence laws of the state of Illinois.
- F. **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

VI. Definitions

- A. **Coercion** means pressuring or forcing another to engage in sexual activity based on fear of harm to self or others. Means of coercion may include but are not limited to pressure, threats, emotional intimidation, a power differential between the parties, and/or the use of physical force.
- B. **Complainant** means an individual who is alleged to be the victim/survivor of conduct that could constitute sexual harassment under this Policy.
- C. **Consent** means voluntary, informed, and mutual agreement to engage in sexual activity, and may be withdrawn at any time. Refusal to consent does not have to be verbal; it can be expressed with gestures, body language, or attitude. However, a lack of verbal or physical resistance or submission resulting from the use or threat of force, coercion, manipulation, or intimidation does not constitute consent. Likewise, a person’s manner of dress, consent to prior sexual activity, consent to sexual activity with a different person, or relationship status with the person does not constitute consent. It is the responsibility of the initiator of any sexual activity to ensure that he or she has the other person’s consent before engaging in sexual activity.

A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent. Sexual contact with anyone who is under the legal age of consent, is asleep or unconscious, or who the person knows or reasonably should

know is incapacitated due to consumption of alcohol, drugs, medication, or a mental or physical impairment is a violation of this Policy. People who are unconscious or physically unable to communicate are incapable of giving consent for purposes of this Policy. Therefore, a Respondent's belief that the Complainant consented to the sexual activity due to the Respondent's intoxication or recklessness is not a defense.

- D. **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 the College investigate the allegation of sexual harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the College.
- E. **Grievance Process** means the fact-finding process from the time of the filing of the Formal Complaint through the final determination of an appeal (if any).
- F. **Incapacitation** means the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, without limitation, sleep, blackouts, and/or a disability that impacts the ability of an individual to provide legal consent. Incapacitation is determined by how the alcohol or other drugs consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. Because incapacitation may be difficult to discern, individuals are strongly encouraged to err on the side of caution.
- G. **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under this Policy.
- H. **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 the College's educational programs and activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter sexual harassment. Supportive measures may include referral to counseling and health services, referral to the Employee Assistance Program (for full-time employees only), extensions of deadlines or other course-related adjustments, modifications of work or class schedules, dining or housing accommodations, campus escort services, mutual restrictions on contact between the parties ("no-contact orders"), changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive measures may also include written notification about available services both within the College and the community and options for available assistance as required by the Clery Act. Supportive measures are not disciplinary measures. Nevertheless, violation of a directive and/or other action issued as a supportive measure may result in disciplinary action separate from any sanctions issued under the Procedures.

VII. Reporting Prohibited Conduct

- A. **Notice of Allegations.** The College has notice of sexual harassment or allegations of sexual harassment when such conduct is reported to the Title IX Coordinator(s) or any official of the College who has authority to institute corrective measures on behalf of the College. The College considers any of the following roles to have authority to institute

corrective measures on behalf of the College: Title IX Coordinators; VP for Student Development; Athletics Director; Dean of Residence Life; Dean of Student Wellness; Dean for Student Engagement.

However, all employees are required to report any alleged sexual harassment to the Title IX Coordinator(s), consistent with the requests of the Complainant.

- B. How to Report Prohibited Conduct.** The College requires all employees and strongly encourages individuals, including third-party bystanders, to report incidents of sexual harassment and sexual misconduct to the Title IX Coordinator(s). The College maintains multiple methods of reporting conduct in violation of this Policy such as reporting by email, on-line, in-person, video-conference, or by telephone.¹ Although there is no specific time limit for reporting a suspected violation of this Policy, an individual who believes that he or she has been subjected to conduct that violates this Policy is encouraged to contact one of the resources set forth below as soon as possible after the alleged policy violation to discuss the available options for proceeding.

1. The Title IX Coordinator(s)

Title IX Coordinator: Diane Padilla, Student Services Building #211,
diane.padilla@wheaton.edu, (630) 752-7885

Deputy Title IX Coordinator for Students: Carrie Williams, Student Services Building #214, carrie.williams@wheaton.edu, (630) 752-5797

Deputy Title IX Coordinator for Employees: Karen Tucker, Blanchard #154,
karen.tucker@wheaton.edu, (630) 752-5060

2. Public Safety

Individuals may also report incidents under this Policy to Wheaton College's [Department of Public Safety](#):

Phone: (630) 752-5911
Email: public.safety@wheaton.edu
In Person: Chase Service Center

Public Safety can assist in securing resources and/or making a report to the local police, regardless of the location where the incident occurred. Reports made to Public Safety are not confidential and must be shared with the Title IX Coordinator(s). *Please note: Public Safety employs student workers. If you wish to speak with a non-student, you may ask to speak with an officer.*

3. File On-Line

To file an on-line report please click [here](#) or go to www.wheaton.edu/titleixandequity.

¹ During the COVID-19 season, we kindly ask that reporting parties temporarily refrain from in-person reporting and use other reporting options referenced above.

4. Anonymous and Confidential Electronic Reporting

The College recognizes that in some instances, individuals may wish to initiate an anonymous report to protect their identity. Individuals wishing to make an anonymous and confidential report may do so by visiting the College's [anonymous reporting link](#) or go to www.wheaton.edu/titleixandequity. Anonymous reports will be investigated to the greatest extent possible. However, the College's ability to take action may be limited in the case of anonymous reports by the amount of information provided.

C. Amnesty for Good Faith Reports of Sexual Misconduct

The College encourages the reporting of violations of this Policy and seeks to remove any barriers to an individual making a report. The College recognizes that students may be hesitant to report sexual misconduct in some circumstances, such as when they or others may be accused of violating other College policies, such as drinking alcohol or using drugs at the time of the incident. Given this concern and the College's desire to provide for the safety of all community members, no conduct proceedings or conduct record will result for students from an individual's good faith report of sexual misconduct believed to violate this Policy.

D. Response to a Report. With or without a Formal Complaint, upon receipt of a report of sexual harassment, the Title IX Coordinator(s) will promptly contact the Complainant to discuss the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.

E. Information Packet. Upon a receipt of a report of sexual assault, dating violence, domestic violence or stalking, the College shall provide an information packet listing, in plain, concise language the survivor's rights, options, and resources and the procedures to follow, including information in writing about—

1. The importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order;
2. How and to whom the alleged offense should be reported;
3. Options regarding law enforcement and campus authorities, including notification of the option to:
 - a. notify proper law enforcement authorities, including Public Safety and local police;
 - b. be assisted by campus authorities in voluntarily notifying law enforcement authorities; and
 - c. decline to notify such authorities;
4. Where applicable, their rights and the College's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court;
5. Information about appropriate and available services both at the College and in the community; and
6. Options for accommodations and supportive measures and how to request them.

The College's information packet for survivors of sexual assault, dating violence, domestic violence and stalking is located [here](#) or available from the Title IX Coordinator.

- F. **Implementation of Supportive Measures.** The College shall treat parties equitably by offering Supportive Measures to the Complainant, and by following a grievance process that complies with this Policy before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against the Respondent. The College will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the College's ability to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures. The Title IX Coordinator should record and retain records regarding requests and provision of Supportive Measure in accordance with the requirements set forth below.
- G. **Emergency Removal.** The College reserves the right to remove a Respondent from its educational programs or activities on an emergency basis, provided that the College undertakes an individualized safety and risk analysis, determines 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 provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.
- H. **Administrative Leave.** The College reserves the right to place an employee on administrative leave during the pendency of a grievance process.

VIII. Procedures for Resolving Complaints of Prohibited Conduct

A. Informal Resolution

At any time prior to reaching a determination regarding responsibility, the College may facilitate a voluntary informal resolution process (e.g. coaching, mediation, Restorative Justice Circles, etc.) that does not involve a full investigation and adjudication. In such cases, the College will:

1. Provide the parties with a written notice disclosing:
 - a. The allegations,
 - b. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to an informal resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint, and
 - c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
2. Obtain the parties' voluntary, written consent to the informal resolution process.
3. Complete the informal resolution process within 60 days of receiving the Formal Complaint, unless unusual or complex circumstances exist.

The College will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

The College does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints of sexual harassment under this Policy. The College will not require the parties to participate in an informal resolution process and will not offer an informal resolution process unless a Formal Complaint is filed.

B. Formal Complaint and the Grievance Process

1. **Filing a Formal Complaint.** A Formal Complaint may be filed with the Title IX Coordinator(s) in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator(s) above. A “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the College) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party. A Formal Complaint shall trigger an investigation except as specified below.

2. **Dismissal of a Formal Complaint.** The College shall investigate the allegations in a Formal Complaint, except as follows:

- a. The College shall dismiss the Formal Complaint if the conduct alleged in the Formal Complaint:
 - i. would not constitute sexual harassment as defined by this Policy, even if proved,
 - ii. did not occur in a College educational program or activity,
 - iii. or did not occur against a person in the United States.

This dismissal will not preclude the College from taking further action under any other policy or procedure.

- b. The College may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing:
 - i. Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
 - ii. Respondent is no longer enrolled at or employed by the College; or
 - iii. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
- c. Upon a dismissal required or permitted under this section, the College will promptly send written notice of the dismissal and reason(s) simultaneously to the parties.

3. **Consolidation of Formal Complaints.** The College 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, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.

4. **Initial Notice of Charges**

Upon receipt of a Formal Complaint, prior to commencing the investigation, the College shall provide the following written notice to the parties who are known. This notice shall include:

- a. This Policy (as a link or attachment).
- b. Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in this Policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under this Policy, and the date and location of the alleged incident, if known.
- c. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- d. Notification to the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney.
- e. Notification to the parties that they may inspect and review evidence, as set forth in this Policy.
- f. Any provision in the College’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- g. Describes the standard of evidence that will be used.
- h. Lists all possible sanctions the College may impose.

5. **Amended Notice of Charges.**

If, during an investigation, the College decides to investigate additional Title IX allegations about the Complainant or Respondent that are not included in the initial notice of charge, the College must provide notice of the additional allegations to the parties whose identities are known.

6. **Principles for the Grievance Process**

Under this grievance process, the College shall:

- a. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the College and not on the parties, provided that the College cannot access, consider, disclose, or otherwise use a 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 the College obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the College must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3).

- b. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- c. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- d. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or grievance proceeding, subject to the restriction described elsewhere in this process.
- e. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- f. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.
- g. Require that any individual designated as a Title IX Coordinator, Investigator, Adjudicator, Appellate Officer, or any person to facilitate an informal resolution process, not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The College may use internal personnel or external parties in the informal resolution process or the grievance process, provided that they meet this requirement.
- h. Include a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- i. The standard of evidence used to determine whether the Policy has been violated is whether or not there is sufficient evidence to establish that it is more likely than not that the Respondent violated the Policy. This is often referred to as a "preponderance of the evidence" standard.
- j. 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 such privilege has waived the privilege.

7. Participation of Advisors

As provided elsewhere in this Policy, the Complainant and Respondent are entitled to bring an advisor of their choice, at their expense, to any meeting, interview, or proceeding in connection with a report of a violation of the Policy. In matters involving employees, a party's supervisor, subordinates, and peers

in the same department may not act as an advisor due to the potential conflict(s) of interest in serving in this role.

Parties will be provided with timely written notification of meetings, interviews, or opportunities for review of documents or reports. Therefore, the College reserves the right to proceed with any meeting, interview, or document or report review period regardless of an advisor's availability.

Except as provided below regarding conducting cross-examination at a live hearing, a party's advisor may not speak on behalf of the individual during, or participate directly in, meetings or other proceedings. Advisors are likewise expected to maintain the privacy of any records shared during the complaint resolution process. Such records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may restrict the role of an advisor who fails to observe the College's limits on participation in the proceedings or the College's privacy expectations.

8. Extensions of the Grievance Process

The Title IX Coordinator may grant or deny requests from either party to temporarily delay the grievance process or may issue the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action.

Good cause may include 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.

9. Investigation of Formal Complaints

The parties will be informed of the assigned Investigator(s) at the outset of a formal investigation. If a complaint is filed against a Title IX Coordinator(s), a College Vice President, or the College President, or involves circumstances deemed by the College in its discretion to be extraordinary or particularly sensitive, the College may appoint external investigator(s) to ensure the investigation and adjudication process is both impartial and thorough.

When investigating a Formal Complaint, the College shall conduct the following steps within a reasonably prompt timeframe unless unusual or complex circumstances exist:

- a. Engage in fact-gathering of all relevant facts. Credibility determinations and fact-finding shall be conducted in the live hearing phase of the grievance process.
- b. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether

obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

- c. Prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- d. Make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- e. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, provide each party and the party's advisor, if any, access to a copy of the investigative report for their review and written response.

IX. Live Hearings Under the Grievance Process

A. Requirement of a Live Hearing for Fact-Finding and Determining Responsibility.

1. Following the investigation, the College shall conduct a live hearing for the purposes of determining responsibility for allegations of sexual harassment in the Formal Complaint within a reasonably prompt timeframe unless unusual or complex circumstances exist
2. The parties will be informed of the assigned Adjudicator(s) prior to the live hearing. The Adjudicator(s) will not be the same person(s) as the Title IX Coordinator or the investigator(s).
3. If a party does not have an advisor present at the live hearing, the College will provide without fee or charge to that party, an advisor of the College's choice, who may be, but is not required to be, an attorney, to conduct cross examination on behalf of that party. The College is obligated to ensure each Party has an advisor, either of the Party's or the College's choice, regardless of whether or not the Party is present at the hearing.
4. Live hearings may be conducted with all parties physically present in the same geographic location or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
5. At the request of either party, the College shall provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Adjudicator(s) and parties to simultaneously see and hear the party or the witness answering questions.
6. The College shall create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

B. Questioning at the Live Hearing

1. At the live hearing, the Adjudicator(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

2. The party's advisor conducting cross-examination may not be a family member or fellow student.
3. Only relevant cross-examination and other questions may be asked of a party or witness.
4. Cross-examination at the live hearing must be conducted directly, orally, and in real-time by the party's advisor of choice and never by a party personally, notwithstanding the College's ability to otherwise restrict the extent to which advisors may participate in the proceedings.
5. Before the Complainant, Respondent, or witness answers a cross-examination or other question, the Adjudicator(s) must first determine whether the question is relevant. The Adjudicator(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.
6. 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.

C. Use of Witness Statements

1. If a party or witness does not submit to cross examination at the live hearing, the Adjudicator(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility.
2. The Adjudicator(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.

D. Written Determination of the Adjudicator(s)

1. The Adjudicator(s) shall issue a Letter of Decision regarding responsibility. To reach this determination, the Adjudicator(s) must apply the standard of evidence required by this Policy. The Letter of Decision include:
 - a. Identification of the allegations potentially constituting sexual harassment as defined by this Policy;
 - b. 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;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of the College's Policy to the facts;
 - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the College's education programs or activities will be provided to the Complainant; and
 - f. The procedures and permissible bases for the Complainant and Respondent to appeal, as set forth in this Policy.

2. The Letter of Decision shall be issued simultaneously to both parties within seven (7) days of the Adjudicators reaching their decision.
3. The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

X. Appeals

Within five (5) business days of receiving the written determination, either party may appeal from a determination regarding responsibility, and from the College's dismissal of a Formal Complaint or any allegations therein, on the following grounds:

- Ground 1:** Procedural irregularity that affected the outcome of the matter;
- Ground 2:** New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- Ground 3:** The Title IX Coordinator, Investigator(s), or Adjudicator(s) 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 burden of proof to demonstrate the grounds for appeal lies with the party requesting the appeal. Any information included in the appeal that does not apply to the above three reasons for filing an appeal will not be considered in the appeal process.

Upon receipt of an appeal, the Title IX Coordinator will share the appeal and any supporting documentation submitted to the non-appealing party. The non-appealing party will be provided the opportunity to submit a written response and supporting documentation within five (5) days of receiving the appeal, which shall thereafter be transmitted to the Appellate Officer.

Appeals will be heard by a member of the College's Senior Administrative Cabinet or his/her designee, or, in cases involving tenured faculty members, the Provost or his/her designee (the "Appellate Officer"). The Appellate Officer shall not be the same person as the Adjudicator(s) that reached the determination regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator. After considering all relevant documentation, and if deemed necessary by the Appellate Officer, meeting with the parties or others, the Appellate Officer may:

- Deny the appeal because the reason for appeal does not fall within the stated grounds for appeal;
- Uphold the original finding and/or sanction;
- Remand the case to the Investigator(s) for consideration of new evidence and issuance of a new report;
- Appoint a new Investigator(s) to conduct new or additional investigation where significant procedural error occurred during the course of the original investigation;
- Refer the case back to the Adjudicator(s) for reconsideration of the sanction; or
- Modify the finding and/or sanction as deemed appropriate by the Appellate Officer.

The Appellate Officer(s) shall issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties within a

reasonably prompt timeframe unless unusual or complex circumstances exist. The decision will be issued no later than seven (7days) after reaching a final decision.

XI. Further Procedures for Tenured Faculty Members

If a decision to impose the sanction termination of the employment of a tenured faculty member is rendered and either not appealed or upheld on appeal, the Provost or his/her designee will follow the procedures for termination for cause set forth in the Faculty Handbook. Termination of tenure proceedings will be conducted in accordance with the procedures set forth in the Faculty Handbook, provided, however, that if a decision is made under the Faculty Handbook not to discharge such tenured faculty member, the matter will be referred back to the President for determination of an alternative sanction.

XII. Sanctions and Remedies

The Adjudicator(s) will determine whether a violation of the Policy has occurred and propose any sanctions or remedies that are consistent with the Policy.

Sanctions that may be imposed in the event of violation of this Policy include:

- Written or verbal apology;
- Mandatory training, educational programming, or counseling;
- Verbal or written warning;
- Community service;
- Probation;
- Removal from housing or other campus programs, activities, or leadership positions;
- Temporary or permanent restrictions regarding entering certain buildings, areas of campus, or access to campus more generally (e.g., a “No Trespass Order,” which prohibits individuals from being present on any College property);
- Issuing a “no contact” order or other contact restrictions or boundaries between the parties or others, including potential alteration of classes or class schedules;
- Performance improvement/management process (employees only);
- Suspension from school or employment (for employees, with or without pay);
- Demotion (employees only);
- Termination of contract with the College;
- Revocation of an honorary degree, award, or associated honorific naming;
- In circumstances indicating particularly egregious behavior during enrollment, revocation of an academic degree;
- Dismissal, expulsion, or other separation from the College.

The Adjudicator(s) may impose sanctions from the above list that they believe is/are fair and proportionate to the Policy violation. In making this determination, the Adjudicator(s) will consider (1) ongoing safety of campus; (2) the seriousness of the incident; (3) the nature of the Respondent’s response; (4) the Respondent’s conduct record; and (5) the impact on the community of the conduct. The Adjudicator(s) will consult with Student Development (for students) and/or Human Resources (for employees) to gather information on the Respondent’s conduct record and ensure the sanctions imposed are consistent with other policies of the College.

The Adjudicator(s) may also impose remedies designed to restore or preserve equal access to the College’s education programs or activities will be provided to the Complainant. Remedies

must be designed to restore or preserve equal access to the College's education program or activity.

The Title IX Coordinator is responsible for effective implementation of remedies and sanctions.

XIII. Retaliation Prohibited

No one may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right established by this Policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right under this Policy constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this section.

Complaints alleging retaliation will be processed under other College policies. More information on these policies and procedures can be found in the College's Nondiscrimination Policy or at www.wheaton.edu/titleixandequity.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute retaliation prohibited under of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

XIV. Conflicts

The College requires any College official participating in the investigation, adjudication, or appeals process under this Policy to disclose any potential or actual conflict of interest. A College employee shall be considered to have a conflict of interest if he or she has existing or potential interests which compete with or might reasonably appear to compete with his or her independent and unbiased judgment in the matter. If the Complainant and Respondent believe an assigned College official has a conflict of interest, the party should notify the Title IX Coordinator and request that the party with a conflict be replaced. If the Title IX Coordinator is the party believed to have a conflict of interest, the party may submit the conflict request to the Vice President for Student Development.

In all cases, requests to replace an individual due to a conflict of interest must be submitted within three (3) days of the party receiving notice of the individual's participation. The written request must include a description of the conflict. If the relevant College official determines that a conflict of interest exists, the College will take steps to address the conflict as appropriate and maintain an impartial process. The final determination regarding the existence of a conflict of interest will be made by the Title IX Coordinator or, in the case of a conflict request involving the Title IX Coordinator, the Vice President for Student Development.

XV. Confidentiality

Consistent with the requirements of this Policy, the College shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of sexual harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

XVI. Educational Programs & Training

The College will provide the following education programming and training regarding conduct prohibited by this Policy.

A. Officials with Responsibility for Investigating or Adjudicating Alleged Violations of this Policy Related to Sexual Misconduct

The Title IX Coordinator, Investigators, Adjudicators, Appellate Officers, and any person who facilitates an informal resolution process (whether internal or external) will complete annual training covering:

- Federal and state laws regarding sexual misconduct;
- The definition of sexual harassment prohibited by this Policy;
- The scope of the College's educational programs and activities;
- How to conduct the grievance process, including hearings, appeals, and informal resolution processes;
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- The role of the College, medical providers, law enforcement, and community agencies in creating a coordinated response to reports of sexual misconduct;
- The effects of trauma on a survivor of sexual misconduct;
- Consent and the impact of drug and alcohol use can have on the ability to consent;
- Cultural sensitivity and compassionate communication skills when speaking with persons reporting sexual misconduct;
- Issues related to sexual assault, domestic violence, dating violence, and stalking; and
- How to conduct an investigation and hearing process that protects the safety of victim/survivors and promotes accountability.

Adjudicators shall receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators shall receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train Title IX Coordinator(s), Investigators, Adjudicators, Appellate Officers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of sexual harassment.

B. Primary Prevention and Awareness Programs

The College will provide annual primary prevention and awareness programs for all students and employees that include the following:

- A statement that the College prohibits sexual misconduct and a description of the College's policies;
- The definition of consent as defined under federal and state law and this Policy;
- The definition of sexual misconduct under federal and state law and this Policy;
- A description of safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of sexual misconduct against a person other than such individual;
- Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks;
- The procedures that individuals should follow if sexual misconduct has occurred;
- The possible sanctions or protective measures that the College may impose following a final determination of a violation of the Policy;
- The procedures used for disciplinary action in cases of sexual misconduct described in this Policy, including the standard of proof that is used;
- Information about how the College will protect the confidentiality of Complainants, including how publicly available recordkeeping will be accomplished without the inclusion of identifying information about the Complainant, to the extent permissible by law,
- Information about how the College will maintain as confidential any accommodation or protective measures provided to the Complainant, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the accommodations or protective measures;
- Written and verbal notification about counseling, health, mental health, victim/survivor advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for Complainants both on-campus and in the community; and
- Written and verbal notification about options for, and available assistance in, changing academic, living, transportation, and working situations, if so, requested by the Complainant and if such accommodations are reasonably available, regardless of whether the Complainant chooses to report the crime to campus police or local law enforcement;
- Written and verbal explanation of rights and options available to an individual reporting sexual misconduct, regardless of whether the offense occurred on or off campus; and
- Written and verbal explanation of rights and options available to Complainants and Respondents in the formal investigation process.

C. Ongoing Prevention and Awareness Campaigns

The College will also provide ongoing prevention and awareness campaigns for students and employees that provide additional information regarding the subjects covered in the primary prevention and awareness programs.

XVII. Institutional Crime Reporting

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the "Clery Act") requires institutions of higher education to compile and publish statistics on certain criminal offenses, including sexual misconduct, that occur on or adjacent to campus property.

The Clery Act requires certain crimes reported to a Campus Security Authority (“CSA”) to be included in those annual statistics. The Clery Act defines a Campus Security Authority as:

- A campus police or security department;
- Any individual or individuals who have responsibility for campus security but who do not constitute a campus police or security department . . . such as an individual who is responsible for monitoring entrance into institutional property;
- Any individual or organization specified in an institution’s statement of campus security policy as an individual or organization to which students and employees should report criminal offenses; or
- An official of an institution who has significant responsibility for co-curricular learning, including, but not limited to, student athletics, housing, engagement, and/or conduct.

All crimes reported and documented under the Clery Act will be recorded in an anonymous manner that neither identifies the specifics of the crime or the identity of the individuals involved.

The College is also obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions, such as when the warning could potentially compromise law enforcement efforts or identify the victim/survivor). The identity of a Complainant under this Policy is not identified in a timely warning.

More information about the Clery Act, as well as a copy of the College’s Annual Safety Report, is available on the College’s [Public Safety website](#).

XVIII. Recordkeeping

The College shall maintain for a period of seven years records of—

- A. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under this Policy, any disciplinary sanctions imposed on the respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the College’s education programs or activities;
- B. Any appeal and the result therefrom;
- C. Any informal resolution and the result therefrom; and
- D. All materials used to train Title IX Coordinator(s)s, Investigators, Adjudicators, Appellate Officers, and any person who facilitates an informal resolution process.

The College will make these training materials publicly available on its website or upon request for inspection by members of the public.

The College shall create, and maintain for a period of seven years, records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of sexual harassment. In each instance, the College will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the College’s educational programs and activities. If the College does not provide a Complainant with Supportive Measures, then the College must document the reasons why such a response was not clearly unreasonable in light of the known

circumstances. The documentation of certain bases or measures does not limit the College in the future from providing additional explanations or detailing additional measures taken.

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