



WHITMAN
COLLEGE

GRIEVANCE POLICY

2019-2020

Whitman College

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Nondiscrimination Statement

Whitman College has a strong commitment to the principle of nondiscrimination in all its forms. In its admission, educational and employment practices, programs and activities, Whitman College does not discriminate on the basis of race, color, sex (including pregnancy and parenting status), gender, gender identity or expression, genetic information, sexual orientation, religion, age, marital status, national origin, disability, veteran status, or any other basis prohibited by the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and applicable federal, state or local laws. Inquiries regarding sex, gender and disability discrimination may be directed to the Title IX and 504 Administrator (509-524-2049; titleix@whitman.edu) or to the Department of Education Office for Civil Rights (951 Second Ave., Room 3310, Seattle, WA 98174; 206-607-1600). All other inquiries can be directed to the Director of Human Resources (509-527-5172; hrdirector@whitman.edu).

The Grievance Policy

The Grievance Policy covers all members of the Whitman College community and provides a way for community members to bring forward problems, allegations or grievances. The Grievance Policy will be used to address issues of harassment, discrimination or violence including sex- or gender-based incidents when Whitman College is put on notice regarding such incidents.

1. PURPOSE AND SCOPE OF THIS POLICY

1.1 Introduction

Whitman College is committed to providing a learning and working environment characterized by mutual respect and fair treatment among all members of its community. An essential component of this environment is a strong ethical foundation and practice of equality, acceptance and nondiscrimination. Harassment or discrimination on the basis of race, color, sex, gender, gender identity or expression, genetic information, sexual orientation, religion, age, marital status, national origin, disability, veteran status, or any other basis prohibited by college policy or by state or federal laws is unacceptable and will be addressed through this policy.

- Whitman College recognizes that problems, allegations or grievances might arise in the daily relationships between faculty, staff and students.
- Individuals at odds with one another are encouraged to first attempt to resolve their differences with each other. The grievance procedure outlined in this policy is primarily for cases where this approach has not been successful or is not appropriate.

Whitman College strives to provide a safe environment in which students and employees can pursue their education and/or employment free from the detrimental effects of sexual harassment, which includes, but is not limited to, harassment based on one's sex or gender, domestic violence, intimate partner violence, stalking, sexual assault, and other forms of non-consensual sexual behavior. Therefore, the college seeks to educate students, faculty and staff about these issues and to provide a means of recourse for those students and employees who believe they have experienced such behavior. The college reserves the right to respond with whatever measures it deems appropriate to prevent sexual misconduct and preserve the safety and well-being of its students and employees.

1.2 Purpose

- To establish procedures for reporting an allegation of misconduct, including those of a sexual nature, from students¹ and employees^{2, 3} both formally and informally. *[Note: Throughout this policy faculty and staff are referred to as “employees” unless otherwise noted (e.g., non-faculty employees.)]*
- To outline procedures for addressing and resolving grievances involving conduct prohibited by Whitman College policy as well as federal and state laws pertaining to higher education and employment.
- To affirm the college’s commitment to investigate all notices of allegations of harassment and/or discrimination, including those of a sexual nature, and act to end the violation, prevent its recurrence, and remedy its effect on individuals and the community.
- To define sexual harassment, which includes, but is not limited to, harassment based on one’s sex or gender, domestic violence, intimate partner violence, stalking, sexual assault, and other forms of non-consensual sexual behavior.
- To identify resources and support for students and employees reporting an incident, including an incident of sexual misconduct.

1.3 Scope and Jurisdiction

- A grievance is an allegation of conduct or actions by a member of the Whitman College community, which harms another employee’s or student’s ability to take full advantage of the college’s educational or employment opportunities, or impedes the claimant’s⁴ ability to study, learn or work. This conduct can occur on or away from campus.
- The Grievance Policy applies principally to students, faculty and staff, but also may apply to those who interact with the Whitman community or Whitman affiliated programs.
- Any member of the Whitman community, including but not limited to students, employees and alumni, has a right to express a grievance.

¹ Students are defined as those who are enrolled in at least one credit.

² The faculty shall consist of the president of the college and the members of the instructional staff who hold the title of Dean, Professor, Associate Professor, Assistant Professor, Professor, or Non-tenured Assistant Professor, Associate Professor, or Senior Lecturer, Senior Adjunct Assistant Professor, Visiting Professor, Lecturer, Music Assistant, Adjunct Assistant Professor and Adjunct Instructor.

³ All other employees are defined as anyone paid for work by the college, including regular, on-call, full-time, part-time and temporarily-employed persons.

⁴ Whitman College uses the term “claimant” to identify the individual bringing forth a grievance.

- This policy applies to all college-related activities on and off campus and applies to all individuals involved in these activities and any activities with a substantial impact on the college or members of the college community.
- This policy also may apply to conduct by or directed toward third parties, who are not themselves employees or students of Whitman College.

The disciplinary action that the college may take will differ depending on the level of control the college has over the person engaging in the harassing behavior. Regardless of the level of disciplinary action taken, Whitman College is committed to remedying the effects of any behaviors that harass, discriminate against, or enact violence against another person based on that person's race, color, sex, gender, gender identity or gender expression, sexual orientation, religion, age, marital status, national origin, disability, veteran status or any other basis prohibited by college policy.

1.4 Education and Prevention

Whitman College provides ongoing education and training to students and employees on a periodic basis addressing its policies regarding harassment, discrimination, domestic and intimate partner violence, stalking and sexual misconduct.

- All employees must periodically complete an online training on harassment and other prohibited conduct.
- Title IX and Campus SaVE Act training is provided several times each year. All incoming students and new employees are required to attend an education and prevention program focused on understanding issues related to incidents of sex- or gender-based discrimination, harassment or violence.
- In addition to "Green Dot," a nationally recognized program effective in preventing all incidents of sex- or gender-based discrimination, harassment and violence, students must attend a program designed to educate them regarding their obligation to obtain consent freely, willingly and knowingly prior to engaging in sexual activity, as well as learning about the detrimental role alcohol plays in such incidents.
- All incoming students are required to complete an online educational module focused on issues of personal and community safety.
- The college provides an annual required training for the appropriate Investigative Review Committee (see 5.3), Sanctioning Boards⁵ (see 5.7), and process advisors (see 4.3) on issues pertaining to particular grievances such as sex- or gender-based offenses.

⁵ The Sanctioning Board for students is the Council on Student Affairs, or for sex- or gender- based incidents, the Council on Sexual Misconduct, which is made up of a subset of members from the Council on Student Affairs, as well as two non-entry level staff members to achieve gender balance. For faculty, the Sanctioning Board is the Faculty Personnel Committee as outlined in the Faculty Code.

1.5 Title IX

Title IX is a federal law that states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.”

Title IX applies to students and employees. Title IX provides regulatory provisions to address sex- or gender-based conduct between students, between students and employees, and between employees that constitute harassment, discrimination or sexual misconduct.

The Title IX Administrator will coordinate the college’s response to reports of sexual misconduct. This includes:

- Facilitating necessary short-term actions to provide appropriate support and safety. This would include providing referrals to on- and off-campus referrals, facilitating requests for safe housing, and negotiating academic accommodations.
- Assisting students or employees who choose to report an incident of sexual misconduct to the Walla Walla Police Department or other law enforcement agencies.
- Making information available to students and employees in print and via the website regarding this policy and related services.
- Assisting claimants and responding parties in understanding their rights and in providing appropriate support and assistance, including counseling and medical resources, academic support and addressing safety issues.
- Providing assistance in obtaining an advisor.
- Recommending interim actions such as interim suspension or other measures to protect the safety of the claimant and/or the campus community.
- Investigating reports of alleged sexual misconduct between students, between students and employees, and between employees.
- Issuing no-contact and no-trespass directives. *[Note: Such directives may remain in place even if an investigation ends in a finding of not responsible.]*
- Overseeing the investigation and adjudication processes and if necessary, the appeal procedures.

1.6 Employee Reporting Obligations under Title IX

Whitman College employees are required to promptly notify the Title IX Administrator no later than 24 hours after learning of, or when on notice of, alleged instances of sex- or gender-based harassment, discrimination or misconduct. Excluded from this requirement are the college’s licensed counselors, health professionals or victim’s advocate working in that capacity at the college. The college has an affirmative obligation to investigate and to act to resolve such allegations in a prompt and effective manner. Failure to promptly notify the Title IX Administrator may result in the college’s inability

to provide support and assistance to a person who experienced unwelcome or unwanted sex- or gender-based conduct. Therefore, the college reserves the right to take appropriate disciplinary action when a Whitman employee fails to report information of which they are aware.

Whitman College has a Title IX Administrator (Julia Dunn, Associate Dean of Students and Title IX Administrator, Memorial Building 330, Whitman College, 509-524-2049, dunnjl@whitman.edu) who will oversee an investigation conducted by a trained investigator or team of investigators, of any allegations of sex- or gender-based discrimination or misconduct.

1.7 Employee Reporting Obligations Related to Behavior Directed at Minors

All Whitman College employees have mandatory child abuse reporting obligations. The state of Washington mandates reporting of abuse or suspected abuse of a minor, even if the minor is a Whitman student. This means that employees must immediately report child abuse to the college's Title IX Administrator and a sworn law officer employed by the Walla Walla Police Department. This reporting obligation applies to all Whitman employees, regardless of whether you are a privileged or confidential source and regardless of whether you witness the abuse at, or outside of, work. Washington State's toll-free, 24-hour, 7 days-a-week hotline (1-866-ENDHARM (363-4276)) will connect you directly to the appropriate local office to report suspected child abuse or neglect.

1.8 Section 504 and Disability

Whitman College does not discriminate on the basis of disability. The college has adopted this grievance policy in order to provide prompt and equitable resolution of allegations of any action prohibited by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) of the U.S. Department of Education or Title III of the Americans with Disabilities Act, overseen by the U.S. Justice Department. Section 504 prohibits discrimination on the basis of disability in any program or activity receiving federal financial assistance. The law and regulations may be examined in the office of Julia Dunn, Associate Dean of Students, 509-527-5158, dunnjl@whitman.edu, who has been designated to coordinate Whitman College's efforts to comply with Section 504.

Any student who believes they have been subjected to discrimination on the basis of disability may file a grievance under this procedure. It is against the law for Whitman College or a member of the Whitman community to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance. The grievance procedures outlined starting at Section 3 will be followed. Any employee who believes they have been subjected to discrimination on the basis of disability may file a grievance under this procedure. Employees who wish to file a grievance should do so with the Director of Human Resources (Shane Watkins, 509-527-5970, watkinse@whitman.edu).

Whitman College will make appropriate arrangements to ensure that persons with disabilities are provided other accommodations, if needed, to participate in this grievance process. Such arrangements may include, but are not limited

to, providing interpreters for the deaf, providing audio recordings of material for the blind, or assuring a barrier-free location for the proceedings. The Section 504 Coordinator will be responsible for such arrangements.

1.9 Academic Freedom and Freedom of Speech

Whitman College recognizes that the educational process can be controversial and unsettling, particularly when one's ideas or values are being challenged. It is not the proper role of the college to attempt to shield individuals from ideas and opinions that they find unwelcome, disagreeable or even deeply offensive. The college neither censors nor censures speech simply because it is offensive or uncomfortable. In determining whether an act or expression constitutes discrimination or harassment, the context must be carefully reviewed and full consideration must be given to protection of individual rights, freedom of speech, and academic freedom.

2. DEFINITIONS

The following are definitions of terms related to this policy and the grievance process. They reference conduct prohibited by federal and state laws, conduct prohibited by Whitman College policies, and conduct that may place the learning and working environment at risk. This list is not meant to be all-inclusive.

2.1 Discrimination

Discrimination is any distinction, preference, advantage for, or detriment to an individual compared to others that are similarly situated or that is based upon an individual's actual or perceived race, color, sex, gender, religion, age, marital status, national origin, disability, veteran status, sexual orientation, gender identity or expression, or other basis prohibited by state and federal laws. Actions or policies that are sufficiently severe or persistent or pervasive and objectively offensive, and result in unequal opportunity in education or employment, or adversely affect the terms and conditions of a person's employment or education at the college, which are motivated or based, in whole or part, on the protected categories can be considered discrimination.

2.2 Discriminatory Harassment

Discriminatory harassment is an unwelcome action based on an individual's actual or perceived race, color, sex, gender, religion, age, marital status, national origin, disability, veteran status, sexual orientation, gender identity or expression, or any other basis prohibited by state or federal laws that is so severe or persistent or pervasive and objectively offensive that it unreasonably interferes with, limits or denies a person's ability to work, participate in, or benefit from the college's educational programs or activities.

2.3 Retaliatory Harassment

Retaliatory harassment is any intentional adverse action taken by an accused individual or allied third party to seek revenge, reprisal or injury to an individual

or group who has exercised, in good faith, the right to file a grievance or make an oral or written report of prohibited harassment or discrimination, or participate in a related grievance proceeding.

2.4 Sexual Harassment

Sexual harassment is defined as unwelcome verbal or physical conduct of a sexual nature that is sufficiently severe, persistent, or pervasive and objectively offensive such that it unreasonably interferes with, limits or deprives someone of the ability to participate in or benefit from the college's educational programs or employment opportunities. The unwelcome behavior may be based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation. A single instance of sexual assault may be sufficient to constitute a hostile environment. Further examples include:

- Unwelcome sexual advances or propositions that interfere with one's education or employment opportunities
- Unwelcome statements, jokes, gestures, pictures, intentional nonconsensual touching of an intimate body area, gender-based bullying, stereotyping, or other conduct that demeans, harasses or intimidates
- Using electronic devices or technology (e.g., cellphone, camera, email, internet sites or social networks) to record or transmit nudity or sexual acts without a person's knowledge and/or permission
- Coercion or an attempt to coerce an unwilling person into a sexual relationship
- Repeatedly subjecting a person to unwelcome sexual attention
- Conditioning a benefit on submitting to sexual advances (quid pro quo). Examples include:
 - » Seeking sexual favors or relationships in return for the promise of a favorable grade or other academic opportunity
 - » Basing an employment-related action (hiring, salary increases, performance appraisal rating, promotion, etc.) on a sexual favor or relationship
- Punishing a refusal to comply with sexual advances
- Removal or dismissal of contraceptives without consent
- Sexual violence or committing violence within a relationship (domestic/dating/intimate partner violence)
- Repetitive and/or menacing pursuit, following or harassment either in person or with electronic devices (stalking)
- Intentionally observing nudity or sexual acts of another person without the person's knowledge or permission (voyeurism)
- Unwelcome touching of the genitals, buttocks or breasts that is intentional or other unwelcome touching or groping
- Forcing/coercing someone to touch you or someone else in a sexual manner

- Threatening to sexually harm someone
 - Initiating sexual activity with a person who is incapacitated and unable to provide consent due to alcohol and/or drug consumption or other condition
 - Inducing incapacitation for the purpose of sexual exploitation
 - Ignoring a sexual limit that has been communicated
 - Coercing or intimidating or attempting to coerce or intimidate someone into sexual behavior
 - Sexual assault, including non-consensual penetration of, or forcing someone to penetrate, an orifice (anal, vaginal, oral) with the penis, finger, tongue or objects
- Sexual harassment is particularly damaging when it exploits the educational dependence and trust between students and faculty/staff. When the authority and power inherent in faculty/staff relationships with students is abused in any way, there is potentially great damage to the individual student, to the accused individual, and to the climate of the institution.⁶

2.5 Consensual Relationships

A consensual relationship, for the purpose of this policy, is defined as a relationship developed between two individuals within the Whitman community that is consensual, as well as romantic, intimate and/or sexual in nature. Such relationships can prove particularly problematic when there is an unequal power relationship, that is, one of the individuals has actual or perceived power, authority and advantage over the other (e.g., a staff member who has authority to control salary decisions, conduct performance appraisals, and promote employment opportunities or enters into a relationship with a subordinate).

It should be noted that negative consequences, including claims of conflict of interest, coercion and exploitation, sexual harassment, hostile work environment, and retaliation, could arise from a less than amicable ending of a consensual relationship when there is a power differential between individuals. Moreover, under the law, co-workers may assert claims of discrimination when a fellow worker is perceived to be receiving favorable treatment due to a consensual relationship with a supervisor.

The Faculty Code states in part, “It is therefore unacceptable for faculty to have romantic or sexual relationships with students, except when the relationship pre-dates either the student’s initial enrollment in courses at Whitman College or the faculty member’s initial appointment and the faculty member holds no supervisory or evaluative role over the student.” And also, “Similar power differentials may also render it inappropriate for faculty to have romantic or sexual relationships with staff over whom they have supervisory authority.” [Note: For the complete faculty statement on consensual relationships, see *Faculty Code, Chapter 2, Article III*.]

⁶ NCHERM: The 2011 NCHERM Campus Title IX Coordinator and Certification and Training Course Materials. Used with permission.

2.6 Consent

The college defines consent as knowingly, freely and affirmatively communicated willingness to participate in sexual activity, expressed by clear, unambiguous words or actions. It is the responsibility of the initiator of the sexual activity to ensure that each party consents to engage in sexual activity. Consent must be present throughout the sexual activity by all parties involved. At any time during sexual activity, either party may communicate that they no longer consent to continued activity. The initiator of sexual activity may not obtain consent through the use of force, threats, coercion or intimidation.

Sexual activity with someone who is known to be, or based on the circumstances should reasonably be known to be, mentally or physically incapacitated or unconscious through the use of alcohol or other drugs constitutes a violation of this policy, because that individual lacks the capacity to consent. The party seeking to initiate sexual activity must know or reasonably should know of the other party's ability to consent or will be determined responsible for failure to effectively obtain consent.

One cannot assume consent because of the existence of a previous dating or sexual relationship. The use of alcohol or drugs does not diminish one's responsibility to obtain consent for sexual activity.

2.7 Incapacitation

One who is physically incapacitated as a result of alcohol or other drug consumption (voluntary or involuntary), or who is unconscious, unaware or otherwise physically helpless, is incapable of giving consent. One may not engage in sexual activity with another person who one knows or should reasonably know to be mentally or physically incapacitated. An individual initiating sexual activity who knows or reasonably should have known that the other party was incapacitated will be in violation of this policy.

To better understand and determine the relationship between the use of alcohol and capacity, we use the National Center for Higher Education Risk Management's accepted explanation. There are multiple levels of effect, along a continuum:

- The lowest level is impairment, which occurs with the ingestion of any alcohol. A synonym for impairment is "under the influence."
- The next level is intoxication, also called drunkenness, similar to the state's drunk driving limit.
 - » A person can be "drunk" and also have the capacity to give consent.
- Incapacity is a higher level of alcohol consumption in which an individual is incapable of understanding information presented, appreciating the consequences of acting or not acting on that information, and making an informed choice.
- The highest level is overdose, or alcohol poisoning, which may lead to coma or death.

3. RESOURCES, SUPPORT & RIGHTS

3.1 Resources and Support

Whitman College provides students and employees with support, counseling, medical referrals, assistance with safety planning (including adjustment to class and work schedules and safe housing), and information concerning their rights.

Students and employees who have experienced an incident of sex- or gender-based harassment, discrimination or violence may seek confidential victim's advocacy support through the YWCA's on-campus advocate (Hunter 406, 509-526-3032, sava@ywcaww.org).

Students can also seek confidential support through the Counseling Center (509-527-5195) or Health Center (509-527-5281). Additional confidential reporting sources for both students and employees are accessible off campus at the YWCA [213 First St., 509-525-2570, 509-529-9922 (24-hour hotline number)].

Students can access resources and support through the Dean of Students Office (Memorial 325) and/or through the Intercultural Center (Reid 216); employees can access resources and support through the Human Resources Office (Memorial 105) and/or through the Office of Diversity, Inclusion, and Equity (Memorial 301).

3.2 Protection from Retaliation

This policy prohibits retaliation against anyone who reports in good faith or is believed to have reported harassment, discrimination or other prohibited behavior, or who is a witness or otherwise involved in a related investigatory proceeding.

Such retaliation will be considered a serious violation of this policy, regardless of whether an informal or formal allegation is upheld. Encouraging others to retaliate is also prohibited and will be subject to disciplinary action.

3.3 Privacy

College officials who are involved in informal or formal allegation resolution procedures or investigations, as a result of being consulted by the claimant, the accused (responding party) and/or college officials conducting investigations, are obliged to respect the privacy of the individuals involved to the greatest extent possible. The Family Educational Rights and Privacy Act (FERPA) requires protection of students' education records. College officials may not disclose information from a student grievance to anyone other than those involved in the hearing process or those who have a legitimate educational interest (as identified as a legitimate need to know information in order to perform one's job or role with the college). The college will fully cooperate with law enforcement in connection with related investigation and legal proceedings.

The college will maintain accurate records pertaining to all incidents of sex- and gender-based harassment, discrimination or violence. While the college will not share information with persons not involved directly in the process, the

claimant and the responding party have a right to discuss and share information relating to their case.

3.4 Threat to the Community

In circumstances in which the information shared suggests there is patterned behavior that constitutes a substantially similar set of conduct of an accused individual, or represents intimidation or coercion, or involves weapons or threats, the Investigative Administrator will continue to gather information when possible or seek corroboration despite the wishes of the claimant. We do this because this is a threat to the community, not just the individual. The claimant will be informed that we will continue to gather evidence as appropriate in order to assess the danger to the community.

3.5 Uncooperative Responding Party

If the responding party leaves the college or refuses to cooperate with the investigation, the investigation may proceed in their absence and may reach a finding based on the evidence available.

3.6 Rights of the Claimant and Responding Party

Whitman College supports the following rights of the claimant and responding party:

- Individuals have a right to file an allegation with the police or other agencies; the college will provide assistance reporting to law enforcement officials or other appropriate resources if they wish to take legal action off campus.
- Campus and legal proceedings may occur simultaneously.
- Persons involved in a grievance process have the right to a prompt investigation and resolution of the complaint.
- The claimant and responding party have the right to have an advisor (see 4.3) who will help them as they go through the investigation and adjudication process and prepare for the hearing, if necessary.
- Individuals have a right to a safe environment — the college will take whatever measures it deems reasonable and feasible to protect the safety of the campus community.
- Persons involved in a grievance process will be treated with dignity, respect and fairness.
- Persons involved in a grievance process have a right to a fair and impartial investigation and adjudication procedures, including academic due process.
- The college will treat all allegations seriously and will impartially investigate allegations of misconduct or policy violation.
- Employees and students involved in an allegation of misconduct or violation of law or college policy will have full access to campus services designed to assist in such cases, including but not limited to the Dean of Students Office,

Human Resources, the Victim's Advocate (for instances of sex- or gender-based harassment, discrimination or violence), the Provost and Dean of the Faculty Office. Students also have access to the Counseling Center and Health Center.

- The college respects the privacy of the claimant and responding party. Information gathered in an investigation will not be disclosed to others who do not have a legitimate need to know.
- Individuals may consult an attorney; however, the college's investigations, hearings and appeal processes are not intended to parallel courtroom proceedings.
- The college will not tolerate any form of harassment, retaliation and/or intimidation of the claimant or the responding party, or of those supporting either party. Any retaliatory action taken against a claimant or responding party or against their friends, acquaintances or other persons cooperating in a college investigation is a violation of college policy.

Students or employees who believe their allegation of harassment or discrimination has not been adequately addressed through the college's grievance process may submit a grievance to either the Washington State Department of Labor and Industries, the Equal Employment Opportunity Commission, or the Office for Civil Rights.

4. GRIEVANCE PROCEDURE

Faculty, staff and students are encouraged to bring unresolved problems and allegations to the attention of the appropriate college officials outlined below. Some harassment allegations and incidents of interpersonal conflict can be resolved informally, whereas others, such as those involving sex- or gender-based harassment, discrimination or violence, will need to undergo a formal resolution process.

4.1 Dishonest Reports

Persons who submit intentionally dishonest reports could be subject to disciplinary action.

4.2 Prompt Reporting

Prompt reporting of an allegation is strongly encouraged, as it allows rapid response to and resolution of prohibited or objectionable behavior. The passage of significant time between an incident and an investigation can result in memory lapses, the departure of key witnesses, or other time-sensitive factors that can impair the investigation.

4.3 Right to an Advisor

The claimant and responding party have the right to have an advisor who will support them through the grievance process, including an investigation and adjudication process, and prepare for the hearing, if necessary.

- Claimant and responding party may select an advisor of their own choosing.
 - » Advisors provide support and guidance during the process. The Investigative Administrator (see 5.4) will recommend faculty or staff members who are trained and qualified to advise the parties involved based on their knowledge of the process. Due to potential conflict of interests, the Whitman College Counseling and Health Center staff are not eligible to serve as advisors.
 - » Parties may choose to have no advisor, or they may choose an advisor other than one that is recommended by the Investigative Administrator.
- The advisor's role is to provide support and to give advice based on their knowledge of the college process.
- Advisors must not have a conflict of interest with either party or with the investigation itself. The appropriate senior staff member will determine whether a conflict exists.
- An advisor may resign their role as advisor at any point without penalty to either the advisor or the party they advise.
- Advisors may not interrupt or interfere with the investigation or adjudication process.
 - » Advisors cannot actively participate, ask questions or cross-examine during a hearing, but they may communicate with their party during a hearing so long as the consultation does not disrupt the proceedings.
- Parties may elect to have their legal counsel serve as their advisor but the legal counsel's role is limited to that of an advisor only. Legal counsel serving as an advisor may not actively represent the party in hearing and appeal proceedings.
- Advisors may not contact any voting members of the Investigative Review Committee or Sanctioning Board (except the Chair, as described below), the other party, witnesses or the advisor for the other party regarding the case.
- Advisors may contact the Investigative Administrator for clarification on procedural matters.⁷
- Advisors may contact the Chair of the Investigative Review Committee or Sanctioning Board in order to receive clarification on procedural matters.
- Before committing to advising, potential advisors may request access to all the available evidence and reports to which their party is entitled to have access. Once they have agreed to serve as an advisor, they will continue to have access to new evidence and reports at the discretion of the party they are advising.
- An advisor may request a break during any hearing or interviews.

⁷Procedural matters are those outlined in this policy.

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- Advisors will be bound by confidentiality and should not disclose any information about the case or proceedings to anyone who was not involved in the case.
- Advisors should address any concerns about procedural errors to the Investigative Administrator.

4.4 How to File a Grievance

Members of the Whitman Community who know about an incident or believe they have been subjected to a civil rights violation such as harassment or discrimination, or who have a grievance concerning a serious interpersonal conflict, should meet with individuals in the following offices:

- Students who have a grievance or who would like information about the grievance process should go to the Dean of Students Office (Memorial 325) or, for grievances involving sex- or gender-based misconduct, the Title IX Administrator (Julia Dunn, Memorial 330, dunnjl@whitman.edu, (509-524-2049). For grievances involving bias incidents, students can also seek information about the grievance process from staff in the Intercultural Center (Reid 216).
- Employees (faculty and staff) who have a grievance or would like information about the grievance process should go to the Human Resources Office (Memorial 105) or the Provost and Dean of the Faculty (Memorial 308). For grievances involving sex- or gender-based behaviors, employees should meet with the Title IX Administrator (Julia Dunn, Memorial 330, dunnjl@whitman.edu, (509-524-2049). For grievances involving bias incidents, employees can seek information about the grievance process from the Vice President of Diversity and Inclusion (Thomas Witherspoon, withertl@whitman.edu, (509-527-4996).
- Students and employees can also file a grievance using the online portal (<http://whitman.edu/assist>).

4.5 Grievance Withdrawal

At any time during the resolution processes (see 5.1 and 5.2), the claimant may withdraw the allegation. However, even if the claimant decides to withdraw the allegation, the college reserves the right to investigate and take appropriate measures, if necessary, to protect the interests and safety of the claimant and the community. If the claimant withdraws the allegation and refuses to cooperate, the likelihood of a meaningful conclusion is severely diminished.

5. GRIEVANCES AND RESOLUTION

5.1 Informal Dispute Resolution

To resolve a dispute informally, a student or employee may first seek advice from their supervisor, department head or their senior staff member. The Director

of Human Resources (typically for staff), the Provost and Dean of the Faculty (typically for faculty), and the Dean of Students (typically for students) are other good sources for advice. An informal resolution can involve a directed conversation, mediation and/or advice about how to resolve the problem.

- Mediation is inappropriate for certain serious behaviors and incidents, such as sexual assault or in circumstances of a substantial power differential between the parties. The college must take decisive action, including a thorough investigation, immediately when it becomes aware of such allegations.
- If a claimant chooses to forego the informal process or if the informal dispute resolution process proves unsuccessful or if the claimant is dissatisfied with the informal process, the claimant may file a grievance with the Director of Human Resources (for staff), the Provost and Dean of the Faculty (for faculty), the Dean of Students (for students) or the Title IX Administrator (Julia Dunn, Associate Dean of Students and Title IX Administrator, Memorial Building 330, Whitman College, 509-524-2049, dunnjl@whitman.edu) for grievances involving sex- or gender-based harassment, discrimination and violence.

5.2 Grievance

Grievances can be submitted in oral or written form. The grievance statement should describe the alleged incident, where and when it occurred, and include any supporting materials. Unless this is a case where an informal resolution is not appropriate, the claimant will be asked about the details of the informal efforts they have made to resolve the issue(s). Please note that when the college has received notice of an incident of sexual harassment, misconduct or discrimination, the Title IX Administrator may initiate an investigation without a grievance. The grievance process is outlined in the flowchart in Appendix A (for faculty) and Appendix B (for non-faculty employees), and Appendix C (for students).

- When a grievance is received, the appropriate senior staff member or their designee will be notified: the Dean of Students for incidents involving students, the Provost for incidents involving faculty, and the Director of Human Resources for incidents involving all other employees.

5.3 Oversight

For the purposes of this policy, the term “Investigative Administrator” will designate the person who will oversee a grievance investigation.

- For incidents involving sex- or gender-based grievances, the Title IX Administrator (Julia Dunn, Memorial Building 330, Whitman College, 509-524-2049, dunnjl@whitman.edu) will oversee any investigation on behalf of the college. For additional information see sections 1.5 and 1.6.
- For incidents involving disability-based grievances, the 504 Administrator (Julia Dunn, Memorial Building 330, Whitman College, 509-527-5158,

dunnjl@whitman.edu) will oversee any investigation on behalf of the college. For additional information see section 1.8.

- For all other grievances, the appropriate senior staff member or their designee will oversee the investigation on behalf of the college: for students, the Student Conduct Administrator; for staff, the Director of Human Resources; or for faculty, the Provost and Dean of the Faculty.
- If a grievance is leveled against an individual who would under normal circumstances serve as an Investigative Administrator, the investigation will be overseen by another appropriate Investigative Administrator.
- For all other grievances, the appropriate senior staff member or their designee will oversee the investigation on behalf of the college: for students, the Student Conduct Administrator; for staff, the Director of Human Resources; or for faculty, the Provost and Dean of the Faculty.
- If a grievance is leveled against an individual who would under normal circumstances serve as an Investigative Administrator, the investigation will be overseen by another appropriate Investigative Administrator.

For the purposes of this policy, the term “Investigative Review Committee” will designate a person or a committee of people who will review any investigation to determine that it was thorough, reliable, fair and impartial.

- For student respondents, the Investigative Review Committee will be the Office of the Dean of Students.
- For non-faculty employees, the Investigative Review Committee will be the Employee Relations Council. The Employee Relations Council (ERC) consists of the Assistant Director of Human Resources, who serves as ex-officio Chair, two staff members with supervisory authority, two non-supervisory staff members, and two faculty members (tenured or non-tenured). When an ERC review becomes necessary, the Chair will select and preside over a hearing panel consisting of three council members, two of whom will be from the staff and one from the faculty. The hearing panel shall be gender balanced and receive training in Title IX and other college policies.
- For faculty employees, the Investigative Review Committee consists of four members. The committee will represent diverse gender representation. To that goal, the committee will consist of the three Division Chairs plus a fourth member. The fourth member will be the Division Chair of the appropriate gender whose term has most recently expired. If necessary, in order to account for possible recusal due to an appearance of impropriety, conflict of interest and/or to ensure gender balance, the Investigative Review Committee will be modified by either removing the appropriate least-senior member of the committee and/or adding previous Division Chairs of the appropriate gender whose terms have most recently expired.

5.4 Gatekeeping

The Investigative Administrator will:

1. Determine the identities and contact information of the claimant and responding party.
2. Conduct an immediate preliminary inquiry to determine:
 - a. Whether the complaining party is willing to engage in the investigation process and allow their identity to be known to the responding party.
 - b. Whether or not the alleged behavior suggests increased or ongoing harm to the claimant or other members of the college community.
 - c. Necessary remedial interim actions and accommodations for the claimant.
3. Based upon information obtained in the preliminary inquiry, the Investigative Administrator will determine if there is enough evidence to proceed with a comprehensive investigation.
 - a. If the preliminary inquiry does not yield enough evidence to warrant an investigation, the claimant will be notified and the case will be closed.
 - b. If there is evidence to warrant an investigation, the Investigative Administrator will notify both parties, review the allegations with the responding party, and assign an investigator or investigators to conduct a thorough, reliable and impartial investigation. Whenever possible, the Investigative Administrator will assign a team of trained and certified investigators.
4. Assist parties in identifying an advisor; for cases involving sex- or gender-based behaviors, advisors recommended by the Title IX Administrator will have received training in the policy and procedures (see 4.3).
5. Review the information related to the grievance allegation in order to initiate appropriate response.
6. Provide appropriate remedies or short-term interim measures as necessary throughout the investigation process for both parties.⁸

5.5 Investigation Procedure

Whitman College respects the human dignity of all members of our community. The college believes in and provides a fundamentally fair process when responding to a civil rights allegation by engaging in an investigative model that is prompt, equitable, thorough, reliable and impartial. A fair process for both the claimant and the responding party is created by ensuring that both parties are:

1. Given comprehensive notice of the allegations,

⁸ Examples of remedial short-term actions and relief might include no-contact directives, a change in housing, work shifts, interim suspension or academic adjustments.

2. Provided an opportunity to present and respond to all evidence and witnesses throughout the investigative process, and
3. Provided notice of the outcome of the investigation and any subsequent sanctions and/or remedies.

For all grievances the Investigative Administrator (see 5.3), in consultation with the investigator or team of investigators, will:

1. Consult with the claimant to determine what interim actions are warranted. Provide appropriate assistance and support to the responding party. Ensure that interim actions for both parties are implemented.
2. Identify potential policy violations, key issues and the scope of investigation in order to develop the investigation strategy and outline a proposed timeline.

Either party may choose not to participate in the investigation (see 3.5, 3.6 and 4.5); however, the investigation will proceed as necessary and the finding will be based on all the available evidence. The non-participating party will retain all rights in the process, but no appeals may then be based upon the failure of the non-participating party to provide information to the investigation, which was available at the time of the investigation.

Once the investigators have interviewed the claimant, the responding party and any witnesses, each party will have an opportunity to review all gathered evidence in advance of the investigators analyzing such in an effort for each party to have the opportunity to identify new information, witnesses or questions to the other party. Investigators will document those requests and answers. They will then evaluate and weigh the available evidence, and write a preliminary report with an analysis and credibility assessment. The preliminary report will then be shared with the Investigative Administrator who will determine if the investigation material represents a thorough, reliable and impartial investigation. The Investigative Administrator will then provide the approval for the investigators to write an investigative report based on the factual evidence gathered and analyze the evidence to determine, by the preponderance of evidence (“more likely than not”) standard, that the responding party is either responsible or not responsible for the alleged policy violation(s). The investigative administration will also include documentation of when evidence and interviews were shared with either the claimant and/or the respondent. If the responding party is found responsible, the investigation report will also include a recommended range of sanctions that will stop the behavior, prevent its recurrence, and remedy the impact for the claimant and the community.

5.6 Post-Investigation Procedures

1. The Investigative Administrator will review the investigative report along with all information from the investigative file including, but not limited to, witness statements, communications, documents and other evidence to verify that the investigation was thorough, reliable, fair and impartial.
 - If the Investigative Administrator believes additional investigative measures are needed, they will send the investigative file back to the investigator(s) for further work.
 - If the Investigative Administrator determines that the investigation was conducted 1) in a thorough, reliable and impartial manner, and 2) consistent with the college's policies and procedures, they will send the investigative file along to the Investigative Review Committee (IRC).
2. The Investigative Review Committee (see 5.3) will review an unredacted version of the investigative report, including the documentation of when evidence and witness statements were shared with the respondent and/or the claimant. They will also receive the recommended range of sanctions and all information from the investigative file including, but not limited to, witness statements, communications, documents and other evidence to verify that the investigation was 1) conducted in a thorough, reliable and impartial manner, and 2) consistent with the college's policies and procedures.
 - If the respondent has filed counter charges against the claimant, the IRC should review both investigative reports simultaneously. If the Investigative Review Committee believes additional investigative measures are needed, they will send the investigative file back to the investigator(s) for further work.
 - If the Investigative Review Committee upholds the Investigative Administrator's determination that the investigation was 1) conducted in a thorough, reliable and impartial manner and 2) consistent with the college's policies and procedures, then appointments will be set with both the claimant and responding party to share the findings and recommended range of sanctions.
3. The appropriate senior staff member, the Investigative Administrator and the investigator(s) will meet with each party separately to share the findings of the investigation.
 - The investigator(s) will walk each party through their investigation in detail including what they learned from each party, from the witnesses and from the evidence provided, and will outline the process they used to weigh all the materials (statements, evidence, etc.), their analysis, and their final finding and recommended range of sanctions.
4. If the responding party is found not responsible, the case is closed; either party may appeal this decision (see 5.8).

5. If the responding party is found responsible, the case is moved along for sanctioning (see 5.7).
 - If the recommended range of sanctions does not include separation from the college (expulsion, suspension, termination or dismissal), the procedures outlined in 5.7.a will be followed.
 - If the recommended range of sanctions does include separation from the college (expulsion, suspension, termination or dismissal), the procedures outlined in 5.7.b will be followed.
6. Both parties remain eligible to seek resources and support (see 3.1) regardless of the outcome of the case as long as they continue as members of the Whitman College community.

5.7 Sanctions and Sanctioning Panels

Students

Sanctions may include:

- Suspended conduct probation. Under suspended conduct probation, any further violations could result in conduct probation or a more severe penalty.
- Conduct probation. Conduct probation may prohibit student participation in campus activities, such as extracurricular activities, public performances, public office in student organizations, or participation in commencement or other official ceremonies. If the student does not comply with the terms of conduct probation, other sanctions may apply.
- Suspension from the college, with reinstatement dependent upon the fulfillment of stipulated conditions.
- Dismissal from the college.
- Sanctions may also include written warnings, mandatory participation in educational programs, restitution or other actions appropriate to the offense.

Employees

Sanctions may include:

- Oral or written reprimand.
- Transfer to a different area or other work restrictions.
- Required training.
- Demotion or reduction in pay.
- Probation, restitution or other actions appropriate to the offense.
- Separation from the college.

Sanctions related to behavior involving sex or gender harassment, discrimination or misconduct must act to end the behavior, prevent its recurrence, and remedy its effect on the claimant and the community.

- a. For instances that **do not** involve separation from the college, the appropriate senior staff member (see 5.2) will determine the final sanction.
- b. For instances that **do** involve a recommended range of sanctions that does include separation from the college, the process noted below will determine the sanction.

i. For students

The Council on Student Affairs is the official body delegated to decide sanctions when suspension or dismissal is within the recommended range of sanctions.

The Council on Sexual Misconduct is a sanctioning board made up of members of the Council on Student Affairs convened for matters involving sex- or gender-based behaviors. The Dean of Students chairs the Council on Sexual Misconduct but does not vote. The Dean of Students moderates the proceedings and ensures that policy is followed. The Dean of Students will choose two students⁹ and two faculty members from the Council on Student Affairs and two non-entry level staff members at the college. The council must be gender balanced.

All participants on the Council on Sexual Misconduct must satisfactorily complete the college's annual council training.

If not enough faculty and/or student members of the Council on Student Affairs are able to serve, the Dean of Students will choose replacement faculty and student members who have previously been trained.

ii. For faculty

The procedures specified in the Faculty Code (Chapter 1, Article III, Section 5) shall be followed.

iii. For non-faculty employees

The appropriate senior staff member for non-faculty employees who are found responsible for a policy violation will determine the final sanction based on the investigation report, finding and recommended range of sanctions.

⁹ Either party retains the right to veto having students serving on the hearing panel. If either party elects to have a panel without students, the Dean of Students will replace the students with one faculty member and one staff member.

5.8 Appeal Process

Either the claimant or the responding party may make an appeal request following the final determination (when the college deems the case closed). Appeals are not to be considered as “seeking a second opinion,” rather they are intended to allow the college to reconsider elements that may have impacted the original decision sufficient to impact the outcome of that decision. See the Faculty Code for appeal processes relative to faculty dismissal.

- The appeal, accompanied by a detailed description of the information supporting the specific appeal category, must be submitted in writing to the Chair of the Faculty within five (5) working days after being informed of the outcome.
- The appeal must be based on the following, and only the following criteria:
 1. New evidence unknown or unknowable at the time of the investigation that may substantially alter the outcome, or
 2. Substantial procedural error(s) that may alter the outcome, and/or
 3. The sanctions imposed fall outside the recommended range of sanctions.
 - Appeal requests based solely on a person’s disagreement with the outcome of the investigation, a sanction-decision or the outcome of the hearing does not meet the criteria for an appeal.
 - All sanctions imposed will be in effect during the appeal process including, but not limited to, suspension, removal from campus or continued no-contact directives.
 - The Chair of the Faculty, to whom the appeal is made, will act on the petition in one of three ways:
 1. May decide to consider the appeal and then rule,
 2. May form a panel to review the appeal, or
 3. May reject the appeal request.
- The Chair of the Faculty is the appellate officer for the college in all grievance matters. If the Chair of the Faculty feels they cannot be impartial or if the Chair of the Faculty has an immediate interest in a particular case, they will recuse themselves from the appeal and the most recent, and available, past-chair will serve as the appellate officer.
- The Chair of the Faculty, in their role as appellate officer, may have access to the investigative report and any other materials related to the case in order to respond appropriately.
- Once an appeal request is considered appropriate for consideration, the other party and the investigation team will be provided with a copy of that request and may submit information or a rebuttal (or, in the case of the other party, their own appeal) to the appeal request to be considered by the appellate officer.

5.9 Timeline Estimates for Grievance Process

The summary below is meant to provide a rough timeline of what to expect when moving through the reporting, investigation and resolution process. Investigations will be conducted in reasonably prompt timeframes with a goal for resolution being 60 days from the initial report to the end of the sanctioning process. Certain issues such as the point in the semester when the incident is reported may result in prolonged investigations. For example, conducting interviews during breaks may be more challenging as students, faculty, or staff may be away. Every effort will be made to find resolution within the 60-day timeframe. Should the incident also be being investigated by local law enforcement, the campus process need not wait for the outcome of the criminal justice system process before making a final determination.

5.10 Safety Precautions

For grievances involving harassment, discrimination or violence, Whitman College will take **immediate** interim measures to ensure the safety of the individual and campus community. Likewise, the college will take steps to offer the claimant interim options for support and remedy. These may include things such as issuing a timely warning statement or no-contact orders, offering a change of housing, offering counseling services, etc.

5.11 Investigations

The length of the investigation will vary widely based on the situation. Investigations will involve meeting with the individuals involved, taking statements, reviewing and gathering any other evidence (documentary, physical, etc.), talking with witnesses, collaborating statements, meeting with college personnel, etc. This process will start **immediately** upon receiving a formal allegation. The college's goal is to be extremely thorough in gathering information, so this process may take several weeks.

5.12 Sanctioning Hearing

For students, hearings will be scheduled providing at least a **two-day notice**. This will allow both parties time to review the investigative summary and prepare their statement.

5.13 Notification of Outcome

Once a sanction has been finalized, the appropriate senior staff member will notify the claimant and the responding party of the outcome either in person or in writing within **two working days**.

5.14 Appeals

Appeals must be submitted in writing **within five (5) working days** of notification of outcome. Ideally, the Chair of the Faculty will decide **within three (3) working days** of an appeal request if the appeal will be considered. If

an appeal request is granted, the other party and the investigation team will be provided with a copy of that request and may submit information or a rebuttal (or, in the case of the other party, their own appeal) to the appeal request to be considered by the appellate officer **within five (5) working days**. Both the claimant and the responding party have one appeal opportunity.

5.15 Notification of Appeal Outcome

Once a determination is made, the Appellate Officer will notify the claimant and the responding party of the outcome either in person or in writing within **two (2) working days**.

6. ANNUAL POLICY & PROCEDURE REVIEW

The Grievance Policy is maintained by the Committee on Academic Freedom and Due Process. This committee will review this policy and procedures on at least an annual basis, with the assistance of the Dean of Students, the Director of Human Resources, and the Provost and Dean of the Faculty.

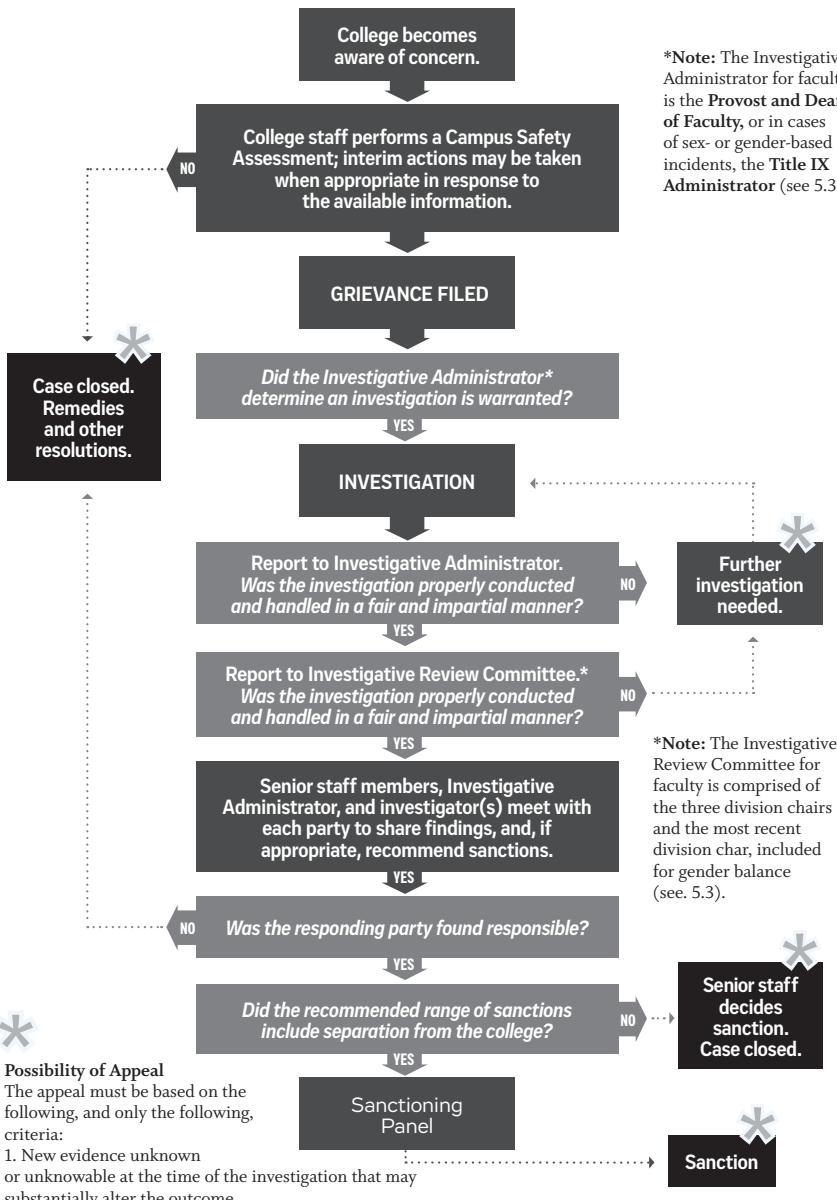
The Office for Civil Rights
Seattle Office
915 Second Ave., Room 3310
Seattle, WA 98174-1099
206-607-1600
OCR.Seattle@ed.gov

**Washington State Dept.
of Labor and Industries**
P.O. Box 44000
Olympia, WA 98504-4000
866-219-7321

**Equal Employment
Opportunity Commission**
Federal Office Building
909 First Ave.
Suite 400
Seattle, WA 98104-1061
800-669-4000

Notes

FACULTY GRIEVANCE PROCESS



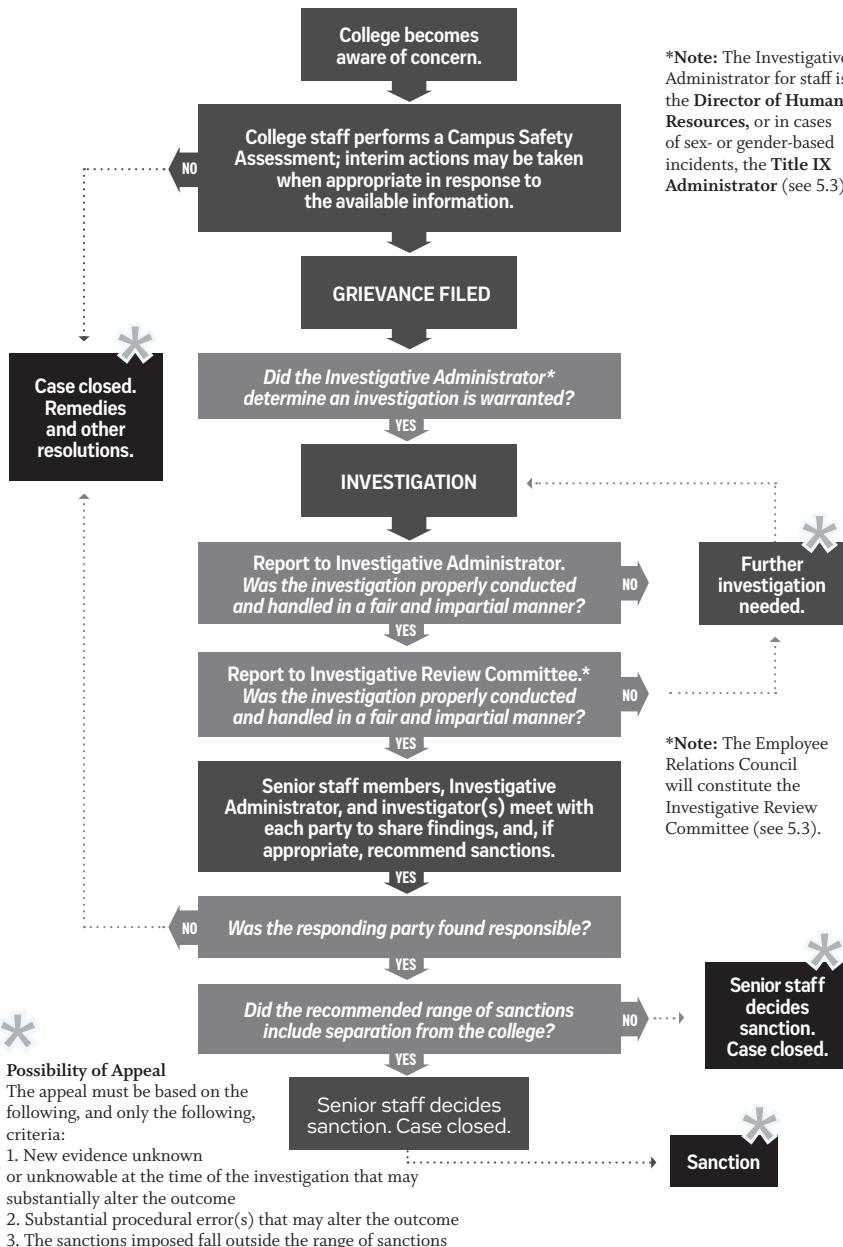
Possibility of Appeal

The appeal must be based on the following, and only the following, criteria:

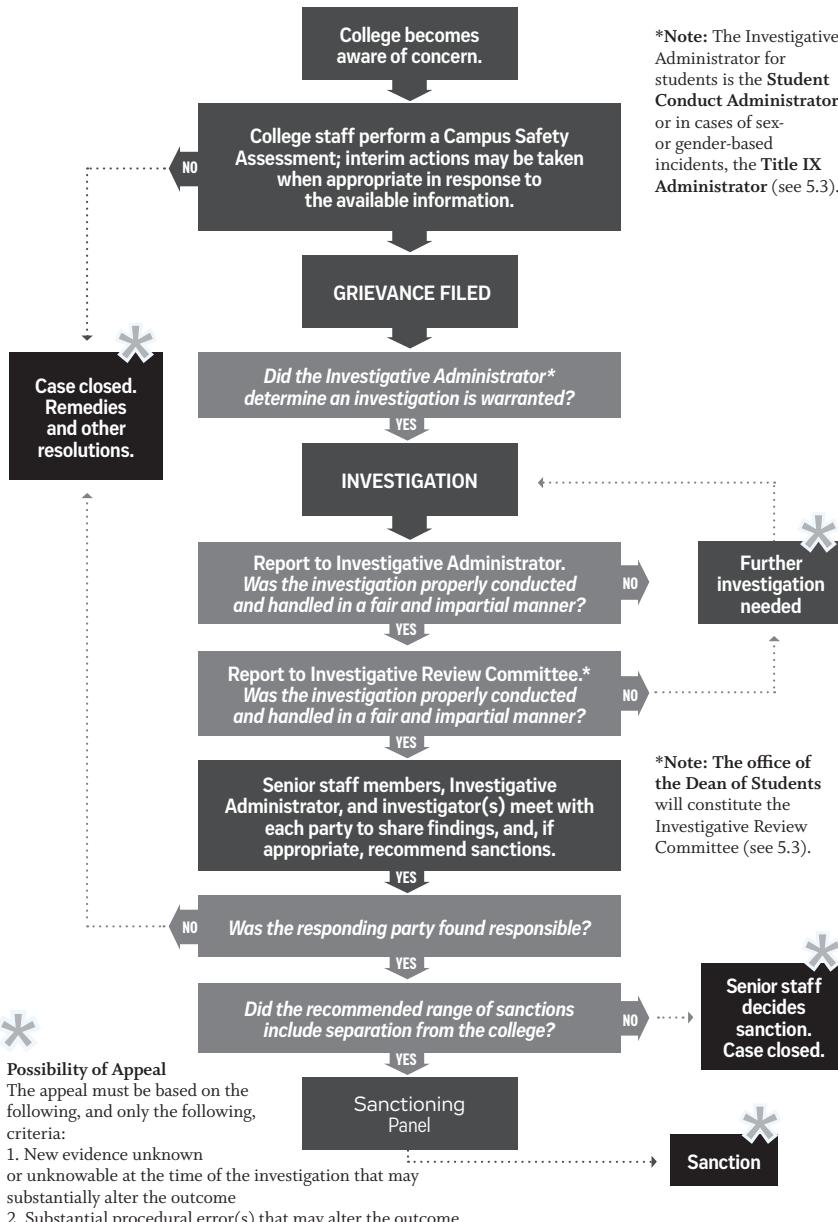
1. New evidence unknown or unknowable at the time of the investigation that may substantially alter the outcome
2. Substantial procedural error(s) that may alter the outcome
3. The sanctions imposed fall outside the range of sanctions (see 5.8)

Appendix B

STAFF GRIEVANCE PROCESS



STUDENT GRIEVANCE PROCESS



Notes

Notes