

X. SEXUAL MISCONDUCT POLICY (passed by faculty on April 22, 2009)

Introduction

Whitman College strives to provide a safe environment in which students can pursue their education free from the detrimental effects of sexual misconduct, which includes sexual harassment and sexual assault. Therefore, the College seeks to educate students, faculty and staff about these issues and to provide a means of recourse for those students 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 students.

Purpose

- To define sexual misconduct involving students, which includes sexual harassment, other forms of non-consensual sexual behavior, and sexual assault
- To identify resources and support for students reporting an incident of sexual misconduct
- To establish procedures for filing complaints of sexual misconduct
- To affirm the College's commitment to preventing sexual misconduct
- To respond appropriately when incidents do occur.

Sexual Misconduct Defined

The College prohibits sexual misconduct in any form. Sexual misconduct is a broad term encompassing any unwelcome behavior of a sexual nature that is committed without consent or by force, intimidation, coercion or manipulation. Sexual misconduct can occur between persons of the same or different genders. Sexual harassment is a form of sexual misconduct. It is gender-based verbal or physical conduct that is so severe, pervasive or objectively offensive that it interferes with a student's ability to benefit from the educational opportunities or activities of the College.

The list of prohibited conduct under this policy includes, but is not limited to, the following:

- Unwelcome sexual advances or propositions that interfere with a student's education or employment opportunities
- Using electronic devices or technology (e.g., cell phone, camera, email, Internet sites or social networks) to record or transmit nudity or sexual acts without a person's knowledge and/or permission
- Intentionally observing nudity or sexual acts of another person without the person's knowledge or permission (voyeurism)
- Unwanted touching of the genitals, buttocks, or breasts that is intentional or other unwanted 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 someone into sexual behavior
- Sexual assault, including unwanted penetration of an orifice (anal, vaginal, oral) with the penis, finger or objects

Consent Defined

The College defines consent as a 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 he or she has the other person's consent to engage in sexual activity. Consent must be present throughout the sexual activity by all parties involved. At any time, a participant can communicate that he or she no longer consents to continuing the activity. Consent may never be obtained through the use of force, coercion, or intimidation or if the victim is mentally or physically disabled or incapacitated, including through the use of drugs or alcohol.

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

Filing a Complaint

Any student may file a complaint of sexual misconduct against any other Whitman College student. Students who choose to file a complaint should do so with the Dean of Students Office. The College does not distinguish between incidents that occur on or off campus, including, for example, study abroad and Semester in the West.

As part of the Dean of Students Office staff, the Associate Dean of Students for Academic Support serves as the Student Conduct Administrator. The Student Conduct Administrator investigates alleged violations of the Whitman College policies and regulations and may adjudicate some complaints of sexual misconduct in an informal hearing process. The Student Conduct Administrator will help students submitting a complaint of sexual misconduct understand their available options, and inform them about the investigation and adjudication procedures.

The Office of the Dean of Students will investigate all complaints of sexual misconduct and sexual harassment between students. Students who wish to file a complaint of sexual misconduct or sexual harassment involving a staff or faculty member should do so with Cindy Matern, Sexual Harassment Officer (Memorial Hall, Room 102, (509) 527- 5970).

Dean of Students Office, Memorial Hall, Room 302, (509) 527-5158

The Dean of Students and the Student Conduct Administrator will coordinate the College's response to reports of sexual misconduct. This includes:

- Making information regarding the Sexual Misconduct Policy and related services available to students in print and via the website
- Assisting complainants and respondents in understanding their rights
- Ensuring that complainants and respondents are provided appropriate support, including facilitating requests for safe housing, negotiating academic accommodations and providing referrals to on and off campus resources
- Assisting students in notifying local law enforcement authorities if the student so requests
- Investigating reports of alleged sexual misconduct involving students
- Issuing no-contact and no-trespass orders
- Initiating interim actions against the accused, such as interim suspension or residence hall suspension
- Overseeing the adjudication process and if necessary the appeal procedures

Students involved in an incident of sexual misconduct have the right to:

1. A safe environment

The College will take whatever measures it deems reasonable and feasible to protect the safety of the campus community, and the well-being and rights of students. Such measures may include but are not limited to, modification of living arrangements, changing an academic or work schedule, or no-contact or no trespass orders.

2. Respect

All parties involved in an incident of sexual misconduct will be treated with dignity, respect and fairness.

3. Be taken seriously

The College will treat all complaints seriously and will investigate allegations of sexual misconduct.

4. Access to College resources and support

All parties will have full access to campus services designed to assist in such cases, including the Dean of Students' office, the Counseling Center and Health Center.

5. A fair conduct process

The College will inform all parties of their options and about the adjudication procedures.

6. File a complaint with the police

The College will not discourage students from or pressure students into taking legal action off campus

7. Freedom from retaliation

The College will not tolerate any form of harassment, retaliation, and/or intimidation of the complainant or the respondent, or of those supporting either party.

Adjudication Process

After the Dean of Students Office receives a complaint of sexual misconduct, the Student Conduct Administrator will initiate an investigation that could lead to charging a student with violating Whitman's Sexual Misconduct Policy. After the investigation, the case may be referred to the Student Conduct Administrator or the Council on Sexual Misconduct for adjudication and for sanctioning if appropriate. The following are important terms that relate to the judicial process.

- 1. Notification:** If the Dean of Students or Student Conduct Administrator receives a report alleging a student's violation of the Sexual Misconduct Policy, the student will be notified of the accusation and apprised of the investigation procedures and the possibility of a hearing.
- 2. Scope of the Judicial Process:** The College's judicial process extends to student conduct that occurs on campus or off campus conduct that seriously affects the student's suitability as a member of the Whitman College community.
- 3. Investigation of Alleged Sexual Misconduct:** The Student Conduct Administrator will interview the student bringing the charge (complainant) as well as the accused (respondent) and any other person who can provide information relevant to the incident.
- 4. Privacy:** The sexual misconduct hearing is closed to the public and no one may disclose information from the hearing to anyone not legitimately involved in the proceedings. The written statements of both parties are educational documents protected by the Family Educational Rights and Privacy Act and therefore, consent from the student who submitted the statement is required before any identifiable information can be disclosed to anyone other than college officials involved in the hearing process or who have a legitimate educational interest.
- 5. Retaliation:** Any retaliatory action taken against a complainant or respondent of sexual misconduct or against their friends, acquaintances or other persons cooperating in the investigation of a charge of sexual misconduct is a violation of College policy. This includes any form of intimidation, threats, harassment or knowingly filing a false complaint.
- 6. Formal Hearing:** A Formal Hearing is held when cases alleging sexual misconduct are referred to the Council on Sexual Misconduct.
 - The Council on Sexual Misconduct is an ad hoc committee of the Council on Student Affairs and is the official body delegated to decide responsibility when alleged sexual misconduct is brought to a Formal Hearing. The Dean of Students chairs the Council on Sexual Misconduct

but does not vote. The Dean moderates the proceedings and ensures that policy is followed.

- The Dean of Students will choose two students 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.
- If not enough faculty and/or student members of the Council on Student Affairs are able to serve, the Dean will consult the Council on Student Affairs to choose replacement faculty and the Executive Council of ASWC for replacement student members.
- All participants on the Council on Sexual Misconduct must receive training. It is advisable that participants be retrained annually and mandatory that they be retrained every three years

7. **The Informal Hearing process:** In cases where the complaint is adjudicated by the Student Conduct Administrator, an informal hearing process will be followed.
8. **Appeal Board:** An appeal board will be formed in cases where the decision of the Council on Sexual Misconduct is challenged.

Education, Communication, and Training

The College conducts an annual mandatory training for faculty, students, and staff who participate in the adjudication of sexual misconduct cases. In addition, the Sexual Misconduct Victim Advocate will provide an educational program on sexual misconduct to all incoming students who will then be required to sign a form indicating their awareness of the policy.

Preparing for a Hearing before the Council on Sexual Misconduct

1. Prior to a Formal Hearing, both parties will meet separately with the Dean of Students or Student Conduct Administrator to review their statements and other information relevant to the hearing. The College requires the complainant to provide a written statement. The College recommends, but does not require, the respondent to provide a written statement.
2. The Student Conduct Administrator will assist both the complainant and the respondent through the process of choosing an advisor who will help them prepare for the hearing.
3. Parties may select an advisor from the Whitman community (but not a member of the Counseling Center or Health Center) to provide support and guidance during the hearing. The Student Conduct Administrator will recommend staff members who are qualified to advise the parties involved. Students may choose to have no advisor.

4. During the hearing, the advisor may speak to the student, but may not speak to the Council or take on any role other than advisor. Throughout the process, the advisors may not contact any voting members of the Council, witnesses, the advisor for the other party, or the other party. As soon as a party chooses an advisor, the other party will be informed. The advisor must not have a conflict of interest. The Dean of Students will determine whether a conflict exists.
5. The Student Conduct Administrator, in conjunction with the complainant, the respondent, and the members of the Council on Sexual Misconduct who are hearing the case, will set the date of the Formal Hearing. The Student Conduct Administrator will meet with the respondent and the complainant to set a reasonable schedule for statements, evidence and witness lists, which they must submit before the hearing. If necessary, the Student Conduct Administrator, in conjunction with the Dean of Students, may alter the deadlines for the Formal Hearing procedures. The College will make every effort to proceed promptly while balancing the basic rights of the complainant and respondent.
6. The College will only permit witnesses if they have testimony directly related to the incident. In general, the College will not permit character witnesses or testimony about past sexual history unless the Dean of Student deems such testimony as relevant to the case.
7. Prior to the hearing the Student Conduct Administrator will provide the parties with a statement of the alleged policy violation, an explanation of the students' rights, the students' written statements, evidence, names of witnesses, a notice of the time and place of the Formal Hearing, and a list of names of members of the Council on Sexual Misconduct.
8. The parties may challenge any voting member of the Council on Sexual Misconduct. The complainant or respondent must make challenges as soon as possible and no later than forty-eight hours after receiving the list of members. The Dean of Students will rule on all such challenges. The Dean of Students will use the same process to choose replacements as he or she uses to choose members of the Council on Sexual Misconduct.
9. The College recognizes that the parties may consult with legal counsel concerning their situations. The College does not permit legal counsel to participate in Formal Hearing and Appeal proceedings under the Sexual Misconduct Policy. Respondents may choose not to provide a statement, or testify, or participate in the proceedings, but must realize that the Formal Hearing could proceed and that the Council on Sexual Misconduct could decide based on only the information presented.
10. The College will not permit retaliation of any kind against participants in proceedings under the policy including advisers. Sanctions for retaliation can be as severe as for sexual misconduct.

11. No College employee who has participated in the proceedings in good faith and who acted reasonably in the best interests of the College shall be liable for any loss or damage incurred. The College has a policy to indemnify College employees and students carrying out their duties as members of a judicial board from any liability or costs incurred because of their job related activities.

The Formal Hearing

1. At the Formal Hearing, the Dean of Students will make introductions, read the alleged policy violation, and explain the procedures. The Student Conduct Administrator will present the case on behalf of the College. At the direction of the Student Conduct Administrator, the respondent and/or the complainant may make opening and closing statements, present evidence, and/or call approved witnesses. Members of the Council, the Student Conduct Administrator, the complainant, and the respondent may question the testimony of parties and/or witnesses. The Dean of Students will only allow questions directly related to the incident; he or she will determine each question's relevance. The complainant and respondent will give their questions to the Dean to present in order to minimize conflict between the parties during the proceeding. The Dean of Students Office will record the proceedings.
2. In cases where either party feels unable to be in the same room with the other, the College will make suitable arrangements to keep the parties separate but allow both parties to hear and respond to all proceedings of the Council prior to deliberations. The College will move the party who makes the request to another location. Following deliberations, the members of the Council will report their decision to the Dean by secret ballot. At least four affirmative votes of the six members of the Council are required to find a student responsible for violating the policy. The Council must consider only the evidence that the Student Conduct Administrator presents at the Formal Hearing. The standard of evidence shall be "preponderance of evidence."
3. If the Council on Sexual Misconduct finds the respondent responsible for violating the Sexual Misconduct Policy, the Council will assign the sanctions, as determined by consensus of the Council. The Council will take into account documentation that the Dean of Students has regarding previous violations of the Sexual Misconduct Policy and/or previous serious violations of other College conduct policies, and an impact statement from the complainant when determining the sanction. In reporting the record, the Dean will not reveal the names of previous complainants.
4. The sanctions may include:
 - Mandatory participation in special educational programs or other sanctions determined by the Council. Failure to comply will lead to more serious sanctions.

- Suspended conduct probation. Under suspended conduct probation, any further violation could result in conduct probation or a more severe penalty.
- Conduct probation. Conduct probation may prohibit student participation in campus activities, such as extra-curricular 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

The Dean of Students or Student Conduct Administrator will notify both parties of the outcome of the hearing no later than two class days after the Council's decision. The Dean of Students or Student Conduct Administrator will notify the respondent and the complainant separately.

5. If the Council on Sexual Misconduct finds the respondent in violation of the policy, the letter to the respondent stating the decision and sanctions will become part of the student's permanent record. After graduation, the student may petition to have the letter removed if conditions set by the Council have been met. The Dean of Students, in consultation with the Student Conduct Administrator and the Chair of the Faculty, will consider the petition.
6. The Dean of Students, omitting the parties' names, will report the decisions and sanctions to the Council on Student Affairs.

Appeal

1. Either party may appeal a decision by the Council on Sexual Misconduct only when one or more of the following conditions has been met:
 - There has been a procedural error or errors by the Council
 - Evidence or information offered by a party as part of the process has inappropriately been ruled admissible or inadmissible for the Formal Hearing
 - New evidence relevant to the specific incident has become known during or following the decision by the Council
2. To appeal, the party must submit a petition stating the grounds for appeal to the Chair of the Faculty no more than seven days after receiving notification of the Council's decision.

3. As expeditiously as possible, the Chair of the Faculty will review all written material regarding the complaint, along with the audio recording of the proceedings. The Chair of the Faculty may, but is not required to, interview the Student Conduct Administrator, the Dean of Students, any member of the Council, either party, and/or witnesses. The Sexual Misconduct Appeal Board will consider only the grounds on which the student has based his or her appeal.
4. The Chair of the Faculty will act upon the appeal petition in one of three ways:
 - Remand the appeal petition to the Council on Sexual Misconduct for supplementation of the record or clarification of their decision
 - Notify the appealing party in writing that the College has rejected the appeal and the reasons for that decision
 - Notify both parties in writing that the College has upheld the appeal and send the case to the Sexual Misconduct Appeal Board based on the cited grounds

Appeal Process

1. The College will select members of the Sexual Misconduct Appeal Board using the same criteria it uses to select the members of the Council on Sexual Misconduct. No one who served on the Council may sit on the Sexual Misconduct Appeal Board. The Chair of the Faculty will chair the Sexual Misconduct Appeal Board. He or she does not have a vote on the Board.
2. The Chair of the Faculty will notify the parties and witnesses of the date, time and location of the Appeal Hearing and the names of the members of the Sexual Misconduct Appeal Board. The complainant or respondent must make challenges to its members no later than forty-eight hours after receiving notification. The College will hold the appeal hearing as quickly as possible, but no earlier than seventy-two hours after the parties receive notification. The Chair of the Faculty will decide what evidence and/or witnesses are relevant to the Appeal. If the Chair of the Faculty deems new evidence or previously excluded evidence admissible, each party will have the opportunity to respond in person or in writing to that evidence. The Sexual Misconduct Appeal Board will use the standard of evidence of "preponderance of evidence." Four affirmative votes are necessary to overturn the original decision and/or sanctions and render a new decision and/or sanctions, if applicable. Within four days of the decision, and after consulting with appropriate College officials, the Chair of the Faculty will notify the respondent and the complainant in writing of the decision.

The Informal Hearing

Some cases of sexual misconduct or harassment will be referred to the Student Conduct Administrator for adjudication. In such cases, the following procedure will take place.

- An appointment between the student and the Student Conduct Administrator will

- be arranged.
- In the meeting with the Student Conduct Administrator, the student will receive a description of the incident including time, date, location, and summary of the evidence. The student will also receive a copy of the Student Handbook, be informed of his/her rights, have the charges explained and options outlined and have the opportunity to make a statement and ask any pertinent questions.
 - Students who fail to appear at the appointed time or fail to reschedule the appointment will receive written notice of the charges, with all of the above information included, and the opportunity to appear in person before the Student Conduct Administrator within two class days of receipt of the notice. Failure to respond at this time will result in the student waiving the right to a hearing and being assessed an appropriate sanction by the Student Conduct Administrator based on the evidence available.

The above initial meeting will result in one of four possible outcomes:

- The Student Conduct Administrator may dismiss the charges.
- The student may accept responsibility for the violation and have a sanction imposed by the Student Conduct Administrator. Such a disposition of the case shall be final and there will be no subsequent proceedings or appeals.
- The student and the Student Conduct Administrator may agree to continue the meeting at a future time. At this subsequent meeting the student may make a statement, present witnesses, and have an adviser (who must be a student or college employee) present. Within two class days of this second meeting the Student Conduct Administrator will inform the student of the decision in writing with an imposed sanction if applicable.
- The Student Conduct Administrator may refer the case to the Council on Sexual Misconduct. If the case is referred to the Council on Sexual Misconduct, the Formal Hearing procedures will be in affect.

Appeal Process

- This decision may be appealed to the Dean of Students within five class days of its receipt.