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**SEXUAL HARASSMENT, DISCRIMINATION, AND SEXUAL MISCONDUCT POLICY AND PROCEDURE**

**Applies to: Faculty, Staff and Students**

**PART I POLICY**

**(A) NON-DISCRIMINATION AND COLLEGE STANDARDS**

Whitman College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment, discrimination, sexual misconduct and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the college has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sexual harassment, sexual misconduct or retaliation that reflect college policy and are in compliance with the 2020 Title IX Regulations. Whitman values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

Whitman College adheres to all federal, state and local civil rights laws prohibiting discrimination in employment and education. The college does not discriminate in its admissions practices, in its employment practices, or in its educational programs or activities on the basis of sex/gender. As a recipient of federal financial assistance for education activities, Whitman College is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex/gender. Sexual harassment, sexual assault, dating and domestic violence, stalking and sexual exploitation are prohibited under Title IX and by college policy. The law and college policy prohibit discrimination and harassment of employees or discrimination and harassment between members of the college community: for example, between an instructor and a student, between two students, or between a student and an applicant or campus guest.

Whitman College also prohibits retaliation against any person participating in good faith in any discrimination investigation or complaint process internal or external to the institution; for bringing a complaint of discrimination or harassment; for assisting someone with such a complaint; for attempting to stop discrimination or harassment.

Any member of the campus community, guest or visitor who acts to deny, deprive or limit the educational, employment, or social access opportunities and/or benefits of any member of the

Whitman College community on the basis of sex is in violation of this policy.

Any person may report sex harassment, discrimination or other forms of sexual misconduct, whether or not the person reporting is the person alleged to have experienced the conduct. Reports may be made by telephone or email using the contact information listed below for the Title IX Coordinator. Reports can be made any time, including during non-business hours online at [Access the Sexual Misconduct Reporting Form here](#) or by calling campus security: (509) 527-5777.

This policy applies in all college programs and activities, including, but not limited to, discrimination in athletics, instruction, grading, and college employment. It is central to the values of the college that any individual who believes they may have been the target of unlawful discrimination or harassment feel free to report their concerns for appropriate investigation and response, without fear of retaliation or retribution.

Questions regarding Title IX or this policy, including its application and/or concerns about noncompliance, should be directed to the Title IX Coordinator. All complaints or any concerns about conduct that may violate this policy and retaliation should be filed with the college's Title IX Coordinator:

Title IX Coordinator  
Whitman College  
345 Boyer Ave  
Walla Walla, WA 99362  
(509) 524-2049  
titleix@whitman.edu

## **(B) SCOPE OF POLICY**

The purpose of this policy is the prohibition of sexual harassment, sexual misconduct and retaliation. When an alleged violation of this policy is reported, those allegations are subject to review and resolution using the college's grievance process related to this policy. When the respondent is a member of the Whitman community this grievance process will be available regardless of the status of the complainant, who may or may not be a member of the Whitman community. The Whitman community includes students (including dual enrolled students), student organizations, faculty, administrators, staff and third parties such as guests, visitors, volunteers, invitees and campers.

The grievance procedures may be applied to incidents, patterns of behavior and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

## **(C) DEFINITIONS**

- **Actual Knowledge:** Official notice of sexual harassment or misconduct allegations to the college's Title IX Coordinator or any other college official who has authority to institute corrective measures on behalf of the college.
- **Advisor:** A person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.

- **Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment based on a protected class or retaliation for engaging in a protected activity.
- **Confidential Resource:** An employee who is not a mandated reporter of notice of harassment and/or retaliation.
- **Day:** A business day when the college is in normal operation.
- **Discrimination:** Conduct on the basis of sex/gender that excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in a college program or activity.
- **Education program or activity:** Locations, events, or circumstances where the college exercises 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.
- **Final Determination:** A conclusion by a preponderance of the evidence that the alleged conduct did or did not violate policy.
- **Finding:** A conclusion by preponderance of the evidence that the conduct did or did not occur as alleged (as in a "finding of fact").
- **Formal Complaint:** A document submitted or signed by a complainant or signed by the Title IX Coordinator alleging sexual harassment or retaliation for engaging in a protected activity against a respondent and requesting that the college investigate the allegation.
- **Formal Grievance Process:** A method of formal resolution designated by the college to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45) and with Sixth Circuit rulings.
- **Hearing Decision-maker or Panel:** Refers to those who have decision-making and sanctioning authority within the college's formal grievance process.
- **Investigator:** The person or persons charged by the college with gathering facts about an alleged violation of this policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence
- **Mandated Reporter:** An employee of the college who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator.
- **Notice:** An employee, student, or third-party who informs the Title IX Coordinator or other official with authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- **Official with Authority (OWA):** An employee of the college explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of the college.
- **Preponderance of the Evidence:** The standard of evidence applied in determining a violation of this policy. Generally considered to be "more likely than not" or "the greater weight of the evidence."
- **Remedies:** Post-finding actions following a determination of a violation of this policy, provided to the complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the college's educational program.
- **Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment, sexual exploitation or retaliation for engaging in a protected activity.

- **Resolution:** The result of an informal or formal grievance process.
- **Sanction:** A consequence imposed by the college on a respondent who is found to have violated this policy.
- **Sexual Exploitation:** When a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses.
- **Sexual Harassment:** The umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence as set forth in Title IX regulations (34 CFR §106.30) and identified in detail in this policy.
- **Title IX Coordinator:** The official designated by the college to ensure compliance with Title IX and the college's Title IX program. References to the coordinator throughout this policy may also encompass a designee of the coordinator for specific tasks.
- **Title IX Team:** The Title IX Coordinator, any deputy coordinators, and investigators responsible for overseeing designated elements of Title IX.

#### (D) TITLE IX COORDINATOR

The Title IX Coordinator is charged with coordinating the college's compliance with federal civil rights laws. The Title IX Coordinator is not an advocate for either the complainant or the respondent. The Title IX Coordinator will explain to both parties the informal and formal processes outlined below and the confidentiality provisions. Where appropriate, the Title IX Coordinator will provide both parties information about supportive measures including options for obtaining no contact orders, medical and counseling services; information about making a criminal report; information regarding academic support; information about receiving advocacy services; and information about other helpful campus and community resources and safety measures.

The Title IX Coordinator will offer to coordinate with other campus officials, when appropriate, to implement interim measures such as no-contact orders, rearrangement of living arrangements, or academic accommodations. The Title IX Coordinator will describe the process of a fair and impartial investigation. The Title IX Coordinator will explain to both parties their rights to have a support person of their choice with them during their interviews and during the hearing stage of these procedures to conduct cross-examination. If a party does not have an adviser, the college will provide one to accompany them to all meetings or interviews. If a party does not have an adviser for the hearing to conduct cross-examination the college must provide one. A party may not conduct cross examination personally.

If an individual does not want to pursue a complaint, the Title IX Coordinator will inform the individual that the college is limited in the actions it can take without the cooperation of the individual and will explain the full scope of supportive measures available. The individual making the report ("Reporter") is encouraged to provide as much detailed information as possible to allow the Title IX Coordinator to investigate and respond as appropriate. The Title IX Coordinator may be limited in the ability to investigate an anonymous report unless sufficient information is furnished to enable the Title IX Coordinator to conduct a meaningful and fair investigation.

A complainant will not be denied supportive measure simply because they choose not to file a formal complaint. The Title IX Coordinator will also explain to parties and witnesses that retaliation for reporting alleged violations of the policy, or participating in an investigation of an alleged violation, is strictly prohibited and that any retaliation should be immediately reported and will be promptly addressed.

The Title IX Coordinator accepts anonymous and third-party reports of conduct alleged to violate this policy and will follow up on such reports.

**(E) INDEPENDENCE AND CONFLICT OF INTEREST**

The Title IX Coordinator and members of the Title IX Team act with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures.

The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against complainants and/or respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the college President Kathleen Murray at 509.527.5132 or kmurray@whitman.edu. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Reports of misconduct committed by the Title IX Coordinator should be reported to the college President Kathleen Murray at 509.527.5132 or kmurray@whitman.edu or designee. Reports of misconduct committed by any other Title IX Team member should be reported to the Title IX Coordinator.

**(F) SUPPORTIVE MEASURES**

The college will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the college's education program or activity, including measures designed to protect the safety of all parties or the college's educational environment, and/or deter sexual harassment and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the college will inform the complainant, in writing, that they may file a formal complaint with the college either at that time or in the future, if they have not done so already.

The Title IX Coordinator works with the complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The college will maintain the privacy of the supportive measures, provided that privacy does not impair the college's ability to provide the supportive measures. The college will act to ensure as minimal an academic or occupational impact on the parties as possible.

The college will implement measures in a way that does not unreasonably burden the other party. These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Student financial aid counseling
- Altering work arrangements for employees or student-employees
- Safety planning

- Providing campus safety escorts
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- [Timely warnings](#)
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

## **(G) EMERGENCY REMOVAL**

The college can act to remove a student respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.

This risk analysis is performed by the Title IX Coordinator in conjunction with the Care Team using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate.

When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived.

A complainant and their advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so.

This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX.

There is no appeal process for emergency removal decisions.

A respondent may be accompanied by an advisor of their choice when meeting with the Title IX Coordinator. The respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

The college will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not

limited to: temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Where the respondent is an employee, existing provisions for interim action are applicable.

**(G) PROMPTNESS**

All allegations are acted upon promptly by the college once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the college will avoid all undue delays within its control.

Any time the general time frames for resolution outlined in college procedures will be delayed, the college will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

**(H) PRIVACY**

Every effort is made by the college to preserve the privacy of reports. The college will not share the identity of any individual who has made a report or complaint of harassment or retaliation; any complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

The college reserves the right to determine which college officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Information will be shared as necessary with investigators, hearing panel members/decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

The college may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

**(I) JURISDICTION**

This policy applies to the education program and activities of the college, to conduct that takes place on the campus or on property owned or controlled by the college, at college-sponsored events, or in buildings owned or controlled by the college's recognized student organizations. The respondent must be a member of the college's community in order for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to the college's educational program. The college may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a

substantial college interest.

Regardless of where the conduct occurred, the college will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial college interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the respondent poses an immediate threat to the physical health or safety of any student or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of the college.

If the respondent is unknown or is not a member of the college community, the Title IX Coordinator will assist the complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. Further, even when the respondent is not a member of the college's community, supportive measures, remedies, and resources may be accessible to the complainant by contacting the Title IX Coordinator.

In addition, the college may take other actions as appropriate to protect the complainant against third parties, such as barring individuals from college property and/or events.

All vendors serving the college through third-party contracts are subject to the policies and procedures of their employers.

When the respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee complainant who experiences sexual harassment or retaliation in an externship, study abroad program, or other environment external to the college where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the complainant.

#### **(J) TIME LIMITS ON REPORTING**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the respondent is no longer subject to the college's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the college will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

## **(K) ONLINE SEXUAL HARASSMENT AND/OR RETALIATION**

The college's policy is written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the college's education program and activities or use college networks, technology, or equipment.

Although the college may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the college, it will engage in a variety of means to address and mitigate the effects.

Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the college's control (e.g., not on college networks, websites, or between college email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the college only when such speech is made in an employee's role with the college or impacts the employee's ability to perform their role.

## **PART II. PROHIBITED CONDUCT**

### **(A) SEXUAL HARASSMENT**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Washington regard sexual harassment as an unlawful discriminatory practice.

Whitman College has adopted the following definition of sexual harassment in order to address the unique environment of an academic community and in compliance with Title IX regulations (34 CFR §106.30). Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex or that is sexual that satisfies one or more of the following:

#### **1) Quid Pro Quo:**

- a. an employee of the college,
- b. conditions the provision of an aid, benefit, or service of the college,
- c. on an individual's participation in unwelcome sexual conduct.

#### **2) Sexual Harassment:**

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,

- e. objectively offensive,
- f. that it effectively denies a person equal access to the college's education program or activity.

**3) Sexual Assault, defined as:**

**a) Sex Offenses, Forcible:**

- Any sexual act directed against another person
- without the consent of the complainant,
- including instances in which the complainant is incapable of giving consent.

**Forcible Sexual acts include:**

**Forcible Rape:**

- Penetration,
- no matter how slight,
- of the vagina or anus with any body part or object, or
- oral penetration by a sex organ of another person,
- without the consent of the complainant.

**Forcible Sodomy:**

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person's will (non-consensually), or
- not forcibly or against the person's will in instances in which the complainant is incapable of giving consent because of age<sup>#</sup> or because of temporary or permanent mental or physical incapacity.

**Sexual Assault with an Object:**

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Forcible Fondling:**

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**b) Sex Offenses: Non-forcible:**

**Incest:**

- Non-forcible sexual intercourse
- between persons who are related to each other
- within the degrees wherein marriage is prohibited by Washington law.

**Statutory Rape:**

- o Non-forcible intercourse
- o with a person who is under the statutory age of consent in Washington

**4) Dating Violence, defined as:**

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the complainant.
  - i. The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
  - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - iii. Dating violence does not include acts covered under the definition of domestic violence.

**5) Domestic Violence, defined as:**

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the complainant,
- d. by a person with whom the complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Washington, or
- g. by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of Washington.

\*To categorize an incident as domestic violence, the relationship between the respondent and the complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

**6) Stalking, defined as:**

- a. Engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.

- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

**(B) SEXUAL EXPLOITATION**

Occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses. Examples of behavior that could rise to the level of sexual exploitation include:

1. Prostituting another person;
2. Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
3. Non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
4. Going beyond the bounds of consent (such as letting your friends hide in the closet to watch you having consensual sex);
5. Engaging in non-consensual voyeurism;
6. Knowingly transmitting an STI, such as HIV, to another without disclosing your STI status;
7. Exposing one's genitals in non-consensual circumstances, or inducing another to expose his or her genitals;
8. Possessing, distributing, viewing or forcing others to view illegal pornography.

**(C) TITLE IX REGULATORY DISMISSAL STANDARDS**

Under 34 CFR §106.45 (B)(3) the college must dismiss the formal complaints if they do not meet the following standards:

1. if the conduct does not constitute sexual harassment as defined above (34 CFR §106.30)
2. if the college does not have control over the harasser
3. if the incident did not occur in a program or activity of the college
4. if the incident did not occur in the United States
5. if the complainant is not a member or seeking to become a member of the college community

**(D) GRIEVANCE RESPONSE PROTOCOL**

(a) Allegations of sexual harassment that meet the five elements identified in Part II (C) of this policy will be addressed under the grievance resolution Part I, **"Title IX Regulatory Grievance Standards."**

(b) Allegations of sexual harassment and/or sexual exploitation that must be dismissed for failure to meet the five requirements in Part II (C) will be addressed under the grievance resolution Part II, **"Title**

## IX Institutional Grievance Standards.”

**PART III. STANDARDS FOR ASSESSING CONDUCT:** As used in the offenses above, the following definitions and understandings apply:

### **(A) CONSENT**

**Consent is:**

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the college to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>1</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the college’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

### **(B) FORCE**

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<sup>1</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

### **(C) INCAPACITATION**

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the respondent neither knew nor should have known the complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

### **(D) COERCION**

Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

## **PART IV. COLLEGE STANDARDS**

### **(A) MANDATED REPORTING**

- All college employees (faculty, staff, administrators) are expected to report actual or suspected sexual harassment or retaliation to appropriate officials immediately.
- In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected sexual harassment or retaliation. They may offer options and resources without any obligation to inform an outside agency or campus official unless a complainant has requested the information be shared.
- If a complainant expects formal action in response to their allegations, reporting to any mandated reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the complainant), who will take action when an incident is reported to them.

**(B) CONFIDENTIALITY OF COMPLAINTS AND REPORTS**

Parties in these processes, including the complainant, the individual accused of a policy violation (“Respondent”), and witnesses, have privacy rights and reasonable expectations of confidentiality in the investigation of matters subject to this procedure.

In addition, the integrity of the process depends on ensuring reasonable expectations of confidentiality. The Title IX Coordinator will keep confidential the complaint, report, witness statements, and any other information provided by the complainant, respondent, or witnesses and will disclose this information only to the complainant, respondent, or witnesses, as necessary to give fair notice of the allegations and to conduct the investigation; to law enforcement consistent with state and federal law; to other college officials as necessary for coordinating interim measures or for health, welfare, and safety reasons, and to government agencies who review the college’s compliance with federal law. The investigation report will be disclosed only to the complainant, respondent, Title IX Coordinator, disciplinary authority as necessary, and college officials as necessary to prepare for subsequent proceedings (e.g., college president and college legal counsel). Information about complaints and reports, absent personally identifiable information, may be reported to college officials and external entities for statistical and analysis purposes pursuant to federal and state law and college policy.

**(C) FEDERAL TIMELY WARNING OBLIGATIONS**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the college must issue Timely Warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The college will ensure that a complainant’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

**(D) FALSE ALLEGATIONS AND EVIDENCE**

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under college policy.

**(E) AMNESTY FOR DRUG OR ALCOHOL POSSESSION AND CONSUMPTION VIOLATIONS**

The college strongly encourages students to report instances of sex-based discrimination, sexual harassment, and sexual misconduct involving students. Therefore, students who report information about sex-based discrimination, sexual harassment, or sexual misconduct involving students will not be disciplined by the college for any violation of the college’s drug or alcohol possession or consumption policies in which they might have engaged in connection with the reported incident.

**(F) FREE SPEECH AND ACADEMIC FREEDOM**

This policy shall not be construed or applied to restrict academic freedom at the college, nor shall it be construed to restrict constitutionally protected expression, even though such expression may be offensive, unpleasant, or even hateful.

The college recognizes and protects full freedom of inquiry, teaching, research, discussion, study,

publication, and for artists, the creation and exhibition of works of art, without hindrance, restriction, equivocation, or reprisal. This right extends to other facets of campus life to include the right of a faculty member or student to speak on general educational questions or about the college. In addressing all complaints and reports under this policy, the college will take all permissible actions to ensure the safety of students and employees while complying with free speech requirements for students and employees. While the college will protect students' and employees' rights against sex discrimination under this policy, this policy does not apply to curriculum or in any way prohibit or abridge the use of particular textbooks or curricular materials.

#### **(G) EXTERNAL COMPLAINTS**

If a person filed a complaint with the Title IX Coordinator and believes the college's response was inadequate, or otherwise believes the college has discriminated on the basis of sex, including sexual harassment, or retaliation, the individual may file a complaint with the:

U.S. Department of Education  
Office for Civil Rights (OCR)  
Lyndon Baines Johnson Department of Education Bldg  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
FAX: (202) 453-6012  
TDD#: (800) 877-8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

#### **Seattle Office**

Office for Civil Rights  
U.S. Department of Education  
915 Second Avenue Room 3310  
Seattle, WA 98174-1099  
Telephone: 206-607-1600  
FAX: 206-607-1601;  
TDD: 800-877-8339  
Email: [OCR.Seattle@ed.gov](mailto:OCR.Seattle@ed.gov)

#### **(H) RESOURCES**

The college's Safety and Security Annual Report of on-campus crime statistics includes forcible and non-forcible sex offenses, in lieu of the single category of rape used on previous reports, as well as statistics on dating violence, domestic violence, and stalking, in compliance with the Campus Security Act.

Copies of the Safety and Security Annual Report (required by the Student Right-to-Know and Campus Security Act of 1990) which details on-campus crime statistics for the three previous calendar years may be obtained at the following locations:

- Diversity, Equity & Inclusion Office, Memorial Building, 301 & 303
- Human Resources Department, Memorial Building 104-107
- Student Activities Office, Reid Campus Center, Room 202
- Campus Security Office, Whitman College Technology Services, Room 130

Crime prevention materials concerning personal safety on campus, rape and date or acquaintance rape are available at the Office of Diversity, Equity & Inclusion, Memorial Building 301 & 303 or Security Office, Whitman College Technology Services 130.

During the academic year, the Office of Diversity, Equity and Inclusion may provide sex crime prevention information through campus publications and by direct presentations to student groups on request.

The college does offer counseling services to its students. Those students needing counseling can contact the Counseling Center at (509) 527-5195. Additional counseling services are also available through the Victim's Advocate, Hunter 406, (509) 526-3032, sava@ywcaww.org.

#### **(I) CRIMINAL REPORTING**

Please remember that if someone is in immediate danger or needs immediate medical attention, the first place to report is 911. You may also report to the college's Campus Security (dial 5777 from a campus phone or (509) 527-5777) or to the Walla Walla Police Department. Some forms of discrimination and harassment may also be crimes. For example, sexual assault, stalking and rape are crimes. Criminal reports should be made to law enforcement, even if it is uncertain whether the particular conduct is a crime. Calling local law enforcement can help you: obtain emergency and nonemergency medical care; get immediate law enforcement response for your protection; understand how to provide assistance in a situation that may escalate to more severe criminal behavior; arrange a meeting with victim advocate services; find counseling and support; initiate a criminal investigation; and answer questions about the criminal process.

In order to preserve any physical evidence of a sexual offense, victims of sexual assault are urged not to bathe, shower, use any feminine douche or change clothing. Such victims should go immediately to a medical facility of their choice to receive medical treatment if needed and to insure that the appropriate examinations are conducted to collect the necessary physical evidence of the assault.

## **GRIEVANCE RESOLUTION PROCESS**

### **SEX/GENDER HARASSMENT, DISCRIMINATION AND SEXUAL MISCONDUCT**

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#### **PART I. TITLE IX REGULATORY GRIEVANCE PROCESS STANDARDS**

##### **(A) NOTICE/FORMAL COMPLAINT**

Upon receipt of a notice or complaint to the Title IX Coordinator of an alleged violation of the policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the college needs to take.

The Title IX Coordinator will initiate at least one of three responses:

- 1) Offering supportive measures because the complainant does not want to file a formal complaint;

and/or

2) An informal resolution (upon submission of a formal complaint); and/or

3) A formal grievance process including an investigation and a hearing (upon submission of a formal complaint).

The college uses the formal grievance process to determine whether or not the policy has been violated. If so, the college will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment or retaliation, their potential recurrence, or their effects.

### **(B) INITIAL ASSESSMENT**

- Following receipt of a formal complaint of an alleged violation of this policy, the Title IX Coordinator or designee engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:
  - The Title IX Coordinator reaches out to the complainant to offer supportive measures.
  - The Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
  - The Title IX Coordinator works with the complainant to determine whether the complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - If a formal complaint is made (requiring the signature of the complainant), the Title IX Coordinator assesses its sufficiency and works with the complainant to make sure it is correctly completed.
  - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, and may seek to determine if the respondent is also willing to engage in informal resolution.
  - If a formal grievance process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX or this policy.
  - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process.
- Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints trained individuals to conduct the investigation, usually within two business days of determining that an investigation should proceed.

### **(C) DISCRETIONARY DISMISSAL**

The college may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The respondent is no longer enrolled in or employed by the college; or
- 3) Specific circumstances prevent the college from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the college will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party.

#### **(D) COUNTERCLAIMS**

- The college is obligated to ensure that the grievance process is not abused for retaliatory purposes. The college permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.
- Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.
- Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

#### **(E) RESOLUTION PROCESSES**

##### **a. INFORMAL RESOLUTION**

Informal resolution can include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- When the parties agree to resolve the matter through an alternate resolution mechanism usually before a formal investigation takes place.
- When the respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process
- To initiate informal resolution, a complainant needs to submit a formal complaint, as defined above. A respondent who wishes to initiate informal resolution should contact the Title IX Coordinator.
- It is not necessary to pursue informal resolution first in order to pursue a formal grievance process, and any party participating in informal resolution can stop the process at any time and begin or resume the formal grievance process.
- Prior to implementing informal resolution, the college will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in

such a process, including information regarding any records that will be maintained or shared by the college.

- The college will obtain voluntary, written confirmation that all parties wish to resolve the matter through informal resolution before proceeding and will not pressure the parties to participate in informal resolution.

**b. FORMAL GRIEVANCE RESOLUTION PROCESS**

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the respondent upon commencement of the formal grievance process. This facilitates the respondent’s ability to prepare for the interview and to identify and choose an advisor to accompany them. The NOIA is also copied to the complainant, who is to be given advance notice of when the NOIA will be delivered to the respondent.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the college presumes the respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the college’s policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an advisor of their choosing and suggestions for ways to identify an advisor,
- A statement informing the parties that the college’s policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to the college’s VAWA Brochure,
- The name(s) of the investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Notice will be made in writing and may be delivered by one or more of the following methods: in

person, mailed to the local or permanent address of the parties as indicated in official college records or emailed to the parties' college-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

**(F) RIGHT TO AN ADVISOR**

The parties may each have an advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their advisor as long as the advisor is eligible and available.

Choosing an advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing decision-maker(s).

Parties may request to have more than one advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

The advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose advisors from inside or outside of the college community. The Title IX Coordinator will also assign an advisor for any party if the party requests.

**(G) ADVISOR'S ROLE IN MEETINGS AND HEARING**

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The college cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not or cannot afford an attorney, the college is not obligated to provide an attorney.

Under U.S. Department of Education regulations under Title IX, cross examination is required during the hearing, but must be conducted by the parties' advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an advisor for a hearing, the college will appoint an advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own advisor, but they may not proceed without an advisor. If the party's advisor will not conduct questioning, the college will appoint an advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself.

A party may elect to change advisors during the process and is not obligated to use the same advisor throughout. The parties are expected to inform the investigator(s) of the identity of their advisor at least two (2) business days before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change advisors at any time. It is assumed that if a party changes advisors, consent to share information with the previous advisor is terminated, and a release for the new advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing advisor at least two (2) business days before the hearing.

All advisors are subject to the same college policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisee's without disrupting proceedings. The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the advisor generally may not speak on behalf of their advisee, the advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their advisors should ask for breaks to allow for private consultation.

Any advisor who oversteps their role as defined by this policy will be warned only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the advisor's non-compliance and future role.

## **(H) INVESTIGATION PROCESS**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the complainant.
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures.
- Identify all policies implicated by the alleged misconduct and notify the complainant and respondent of all of the specific policies implicated.
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties.
- Meet with the complainant to finalize their interview/statement, if necessary.
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible.
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose.

- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Allow each party the opportunity to suggest witnesses and questions they wish the investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide regular status updates to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties and their respective advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding.
- Provide each interviewed party and witness an opportunity to review and verify the investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings.
- The investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.
- Prior to the conclusion of the investigation, provide the parties and their respective advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the college does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., complainant, respondent, complainant's advisor, respondent's advisor).
- The investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses.
- The investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The investigator(s) should document all rationales for any changes made after the review and comment period.
- The investigator shares the report with the Title IX Coordinator for feedback.
- The investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included.

## **(I) ROLE OF WITNESSES IN THE INVESTIGATION**

Witnesses (as distinguished from the parties) may be students, employees or others identified by the

investigator or by the parties. Student witnesses are strongly encouraged to participate in good faith with the investigation process. Witnesses who are employees of the college are expected to cooperate with and participate in the college's investigation and resolution process. Failure of employee witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The college will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

#### **(J) RESOLUTION TIMELINE**

The college will make a good faith effort to complete the resolution process within a 60-90 business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as a estimate of how much additional time will be needed to complete the process.

#### **(K) NOTICE OF HEARING**

Notice will be made in writing and may be delivered by one or more of the following methods: in person, or emailed to the parties' college-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The hearing notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the

hearing will not be considered by the decision-maker(s). For compelling reasons, the chair may reschedule the hearing.

- Notification that the parties may have the assistance of an advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an advisor, and the college will appoint one. Each party must have an advisor present. There are no exceptions.
- A copy of all the materials provided to the decision-maker(s) about the matter, unless they have been provided already.<sup>2</sup>
- An invitation to each party to submit to the chair an impact statement pre-hearing that the decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether parties can or cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the respondent is still subject to this policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the college and remain within the 60-90 business day goal for resolution.

In these cases, if the respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this policy is not in good standing to graduate.

### **(L) DECISION MAKER/HEARING PANEL**

The college will designate a single decision-maker or a three-member panel at the discretion of the Title IX Coordinator. The single decision-maker will also chair the hearing. With a panel, one of the three members will be appointed as chair by the Title IX Coordinator.

The decision-maker(s) will not have had any previous involvement with the investigation.

Those who have served as investigators will be witnesses in the hearing and therefore may not serve as decision-makers. Those who are serving as advisors for any party may not serve as decision-makers in that matter.

The Title IX Coordinator may not serve as a decision-maker or chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the chair or designee.

### **(M) HEARING PROCEDURES**

At the hearing the decision-maker(s) has the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any

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<sup>2</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

additional alleged policy violations that have occurred in concert with the sexual harassment and/or retaliation, even though those collateral allegations may not specifically fall within the policy.

Participants at the hearing will include the chair, any additional panelists, the investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the respondent), advisors to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services.

The chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the decision-maker(s) and the parties and will then be excused.<sup>3</sup>

### **(N) RECORDING**

Hearings (but not deliberations) are recorded by the college for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The decision-maker(s), the parties, their advisors, and appropriate administrators of the college will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **(O) DELIBERATION, DECISION-MAKING AND STANDARD OF PROOF**

The decision-maker(s) will deliberate in closed session to determine whether the respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used.

When there is a finding of responsibility on one or more of the allegations, the decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The decision-maker(s) will review the statements and any pertinent conduct history provided by the appropriate administrator, and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions or recommendations.

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<sup>3</sup> A copy of the order of the hearing proceedings is available upon request in the Title IX Coordinator's Office and will be provided to parties upon commencement of a formal investigation leading to a hearing.

This report must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **(P) NOTICE OF THE OUTCOME**

Using the deliberation statement, the Title IX Coordinator will work with the chair to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their advisors within seven (7) business days of receiving the decision-maker(s)' deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official college records, or emailed to the parties' college-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the college from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the college is permitted to share such information under state or federal law; any sanctions issued which the college is permitted to share according to state or federal law; and any remedies provided to the complainant designed to ensure access to the college's educational or employment program or activity, to the extent the college is permitted to share such information under state or federal law (this detail is not typically shared with the respondent unless the remedy directly relates to the respondent).

The Notice of Outcome will also include information on when the results are considered by the college to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### **(Q) SANCTIONS**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the sexual harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation
- The need to remedy the effects of the sexual harassment and/or retaliation on the complainant and the community
- The impact on the parties
- Any other information deemed relevant by the decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

## **PART II. TITLE IX COLLEGE GRIEVANCE STANDARDS**

### **ALL CASES THAT ARE DISMISSED UNDER THE REGULATORY STANDARDS WILL BE ADDRESSED UNDER THE WHITMAN COLLEGE GRIEVANCE POLICY.**

#### **PART III APPEALS**

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within seven (7) days of the delivery of the Notice of Outcome.

A three-member appeal panel will be designated by the Title IX Coordinator OR a single appeal decision-maker will chair the appeal. No appeal panelists or decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The request for appeal will be forwarded to the appeal chair for consideration to determine if the request meets the grounds for appeal (a “Review for Standing”).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

#### **a. Grounds for Appeal**

Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
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
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent that affected the outcome of the matter.

If any of the grounds in the request for appeal do not meet the grounds in this policy, that request will be denied by the appeal chair and the parties and their advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the request for appeal meet the grounds in this policy, then the appeal chair will notify the other party(ies) and their advisors, the Title IX Coordinator, and, when appropriate, the investigators and/or the original decision-maker(s).

The other party(ies) and their advisors, the Title IX Coordinator, and, when appropriate, the investigators and/or the original decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given seven (7) business days to submit a

response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this policy by the appeal chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the investigator(s) and/or original decision-maker(s), as necessary, who will submit their responses in seven (7) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The appeal chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses will be shared with the appeal panel, or and the chair/panel will render a decision in no more than seven (7) business days, barring exigent circumstances. All decisions are by majority vote and apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the college is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the college is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' college-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above

**b. Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for appeal decision-makers to substitute their judgment for that of the original decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The appeal chair/decision-maker(s) may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original investigator(s) and/or decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final, further appeals are not permitted, even if a

decision or sanction is changed on remand (except in the case of a new hearing).

- In rare cases where a procedural error cannot be cured by the original decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new decision-maker(s).
- The results of a remand to a decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to the college or resumption of privileges, all reasonable attempts will be made to restore the respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

## **(R) FAILURE TO COMPLY WITH SANCTIONS**

All respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final decision-maker(s) (including the appeal chair/panel).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the college and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

## **(S) RECORDKEEPING**

The college will maintain for a period of at least seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the respondent;
3. Any remedies provided to the complainant designed to restore or preserve equal access to the college's education program or activity;
4. Any appeal and the result therefrom;
5. Any informal resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The college will make these training materials publicly available on the college's website; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to the college's education program or activity; and
  - c. If no supportive measures were provided to the complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The college will also maintain any and all records in accordance with state and federal laws.

**(T) REVISION OF POLICY AND GRIEVANCE PROCESS**

This policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. The college reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This policy and procedures are effective [August 14, 2020].