

Wheaton College Sexual and Gender-Based Misconduct Policy for Students

January 4, 2017

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I. INTRODUCTION

The Wheaton College Honor Code pledge states:

As members of the Wheaton community, we commit ourselves to act honestly, responsibly, and above all, with honor and integrity in all areas of campus life... and to behave in a manner that demonstrates concern for the personal dignity, rights and freedoms of all members of the community.

The Sexual and Gender-Based Misconduct Policy ('the Policy') has been developed to reaffirm these values, to provide a prompt and equitable investigation and adjudication process in cases that implicate the Policy, and to provide recourse for individuals whose rights have been violated regardless of that person's sex, sexual orientation, gender identity or gender expression. The Policy describes how Wheaton College ('the College') will investigate a report that a Student has engaged in conduct that could constitute Sexual and Gender-Based Misconduct, as defined in the Policy, and determine what, if any, interim measures and/or disciplinary sanctions are appropriate. Above all, the College considers this Policy, along with our community resources and training, to be part of the College's larger effort to provide its students with a safe community.

The Policy should be read in conjunction with the College's Frequently Asked Questions document that can be found at <http://wheatoncollege.edu/policies/sxassault/>. For more information or to report Sexual and Gender-Based Misconduct, please contact Rachael Pauze, Director of Title IX Compliance at (508) 286-3231, pauze_rachael@wheatoncollege.edu, or in person at her office, Room 227 in the Science Center.

Please note that, consistent with federal interpretations of Title IX, the Policy will not be applied to abridge the use of curricular activities, particular textbooks, or reasonable classroom activities.

II. DEFINITIONS

For purposes of the Policy, the following terms have the meanings indicated in this section.

Appellate Officer. The Dean of Students or a designee.

Complainant. A Complaining Individual who experienced the alleged Sexual and Gender-Based Misconduct and who becomes a party to the conduct process under Section IV of the Policy.

Complaining Individual. An individual who experienced the alleged Sexual and Gender-Based Misconduct.

Confidential Resource Person. A College staff or faculty member or third-party partner who is not required to report allegations of Sexual and Gender-Based Misconduct the Title IX Director.

Effective Consent. Consent which is informed, freely and actively given through clear words or actions, and creates mutually understandable permission regarding the conditions of sexual activity. Effective Consent is achieved only where each party mutually understands what behavior the party's partner consents to and what behavior the party's partner does not consent to with regard to physical and sexual interactions. Effective Consent at one time does not imply Effective Consent at any other time. Effective Consent cannot be obtained: (1) through silence alone (absent a non-verbal action clearly demonstrating consent); (2) from minors (under the age of 16 in Massachusetts), individuals with mental disabilities, or incapacitated persons; or (3) through physical force, threat of physical force (by words, gestures, or non-verbal actions), coercion, fraud, intimidation, or incapacitation.

Non-Consensual Sexual Penetration. Any sexual penetration (anal, oral or vaginal), however slight, with any object or sexual intercourse, without Effective Consent. Sexual intercourse includes vaginal or anal penetration by a penis, object, tongue or finger and oral copulation by mouth to genital contact or genital to mouth contact.

Non-Consensual Sexual Touching, Disrobing or Exposure. Any intentional sexual touching, however slight, with any object without Effective Consent. Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other body orifice of another individual or any other bodily contact in a sexual manner. It also includes ejaculating semen onto another individual without Effective Consent. Any disrobing of another individual, or intentional exposing of oneself to another individual without Effective Consent.

Order of No Contact. A written order issued by the Office of the Dean of Students prohibiting contact between two or more parties and, when applicable, ordering restriction from one or more locations on campus.

Procedural Advisors. Trained faculty members, staff or administrators who provide information and procedural advice regarding the Policy and process to the Complainant and the Respondent.

Procedural Coordinator. The Associate Dean of Students or a designee.

Relationship Violence. Any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual or dating relationship with that person. Relationship Violence may involve one act or an ongoing pattern of behavior. Relationship Violence can encompass a broad range of behavior including, but not limited to, threats, assault, property damage, emotional abuse, violence or threat of violence to one's self, one's sexual or romantic partner or to the family members or friends of the sexual or romantic partner. Relationship Violence can occur with individuals of all genders, gender identities, gender expressions and sexual orientation and can occur across racial, cultural and socio-economic identities.

Reporting Individual. An individual who did not experience Sexual and Gender-Based Misconduct but who becomes aware of it and reports it to the College.

Respondent. An individual who is alleged to have committed Sexual and Gender-Based Misconduct and who becomes a party to the conduct process under Section IV of the Policy.

Responsible Employees. All College employees, including residential advisors and student academic advisors. While residential advisors are Responsible Employees at all times, student academic advisors are Responsible Employees only when receiving disclosures from or about the students whom they advise. Responsible Employees do not include persons with a statutory privilege (licensed psychologists, mental health counselors, social workers, clergy and designated medical personnel) who are acting within that privileged role, and individuals the College explicitly designates as Confidential Resource Persons.

Retaliation. Any acts or words that constitute intimidation, threats, or coercion because of that person's: (1) report of Sexual and Gender-Based Misconduct; (2) assistance in reporting of Sexual and Gender-Based Misconduct; (3) participation in any proceeding under the Policy; or (4) protest of Sexual and Gender-Based Misconduct, and that would also deter a reasonable person from reporting or assisting in reporting a violation of the policy, participating in any proceeding under the Policy, or protesting of Sexual and Gender-Based Misconduct. An adverse action does not include minor annoyances or another's lack of good manners as those actions will not deter a reasonable person from engaging in the process.

Sexual and Gender-Based Misconduct. Sexual Harassment, Sexual Exploitation, Sexual Misconduct by Inducement of Incapacity, Stalking, Relationship Violence, Non-Consensual Sexual Penetration, Non-Consensual Sexual Touching, Disrobing or Exposure, Sexual Misconduct by Incapacity, any other sexual contact or activity that occurs without Effective Consent, as well as any other form of discrimination based on gender.

Sexual Exploitation. Taking non-consensual, unfair, or abusive sexual advantage of another for that individual's own advantage or benefit, even where that behavior does not constitute another Sexual and Gender-Based Misconduct offense.

Sexual Harassment. Any unwelcome sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature, whether verbal, physical, graphic, or otherwise. Sexual harassment may occur between opposite sex or same sex individuals and is not limited by gender or gender identity. In general, Sexual Harassment can be divided into two types of conduct:

Tangible Employment or Educational Action. This type of Sexual Harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity is conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcomed sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a University program or activity.

Hostile Environment Harassment. This type of Sexual Harassment exists when the conduct is sufficiently serious (i.e., severe, pervasive, or persistent) so as to deny or

limit a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities or when such conduct has the purpose or effect of unreasonably interfering with an individual's employment. In determining whether a hostile environment exists, consideration will be made as to whether a reasonable person in a similar situation would have also perceived the conduct as objectively offensive.

Sexual Misconduct by Incapacity. Any sexual interactions with someone a person knows, or reasonably should know, to be incapacitated by alcohol, drugs, sleep, or other type of incapacitating condition, such that they cannot give Effective Consent.

Sexual Misconduct by Inducement of Incapacity. The inducing of incapacitation through the provision of alcohol or drugs to another individual, with or without that individual's knowledge, for the purpose of causing impairment or intoxication and taking advantage of that individual's impairment or intoxication to engage in sexual activities.

Sexual Violence. Any sexual act committed against someone without that person's Effective Consent.

Stalking. An intentional course of repeated conduct or behavior over a period of time, directed at a specific person, which causes the person to feel alarm, annoyance, emotional distress or fear and which may include persistent calling, texting or posting on a social networking site as well as in-person conduct, where the content of the messages or the nature of the in-person conduct is gender-based or of a sexual nature. Stalking may involve individuals who are known to one another or have an intimate or sexual relationship, or may involve individuals not known to one another.

Timely Warning. A warning issued by the Director of Public Safety to the campus community to notify the community of a serious crime that constitutes an ongoing or continuing threat.

Title IX. Title IX of the Education Amendments of 1972 (20 U.S.C.A. § 1681).

Title IX Director. The College Director of Title IX Compliance or a designee.

III. PROHIBITED CONDUCT

This section outlines conduct which is prohibited under the Policy.

(1) Sexual and Gender-Based Misconduct is prohibited. Such prohibitions include:

- (a) Sexual Exploitation;
- (b) Sexual Harassment;
- (c) Sexual Misconduct by Inducement of Incapacity;

- (d) Stalking;
 - (e) Relationship Violence; and
 - (f) Any sexual contact or activity that occurs without the Effective Consent of any individual involved including but not limited to:
 - (i) Non-Consensual Sexual Penetration;
 - (ii) Non-Consensual Sexual Touching, Disrobing or Exposure; and
 - (iii) Sexual Misconduct by Incapacity.
- (2) Retaliation is prohibited.
- (3) Attempts to commit Sexual and Gender-Based Misconduct is prohibited.
- (4) Aiding the commission of Sexual and Gender-Based Misconduct is prohibited.
- (5) Discrimination on the basis of gender is prohibited.

IV. PROCESS FOR RESOLVING COMPLAINTS

This section outlines how the College will investigate a report of conduct that could constitute a violation of the Policy and determine what, if any, interim measures and disciplinary action is appropriate.

- (1) **Reporting Sexual and Gender-Based Misconduct.** Responsible Employees must, within twenty-four (24) to forty-eight (48) hours, disclose to the Title IX Director incidents of Sexual and Gender-Based Misconduct that come to their attention.
- (2) **Response to reports of Sexual and Gender-Based Misconduct.** The College will respond to all reports of Sexual and Gender-Based Misconduct in a prompt, equitable, and effective manner.
- (3) **Initial Assessment; Interim Measures.** After receiving notice of conduct that could constitute a violation of the Policy, the Title IX Director will take a number of initial steps. These initial steps are not an investigation. Rather, these initial steps will enable the College to assess the need to take any immediate action to address the safety and health needs of the Complaining Individual and the College community and to determine the next steps for investigating the reported conduct and the need for any interim measures. These initial steps may include, but are not limited to, the following:
- (a) Contact with the Complaining Individual. The Title IX Director will promptly contact the Complaining Individual and encourage the individual to meet to

discuss the nature and circumstances of the reported conduct, review relevant documentation that is available, and address the Complaining Individual's immediate physical safety and emotional needs, including the need for any interim measures. Examples of possible interim measures may include interim Orders of No Contact, requests for academic adjustments or other accommodations, access to additional support services, changes to living, transportation and working situations, and other actions to address the situations and concerns raised on an interim basis. The Title IX Director will notify the Complaining Individual of the available resources for seeking medical treatment, counseling, spiritual guidance, or other interim measures. These resources can be found at <http://wheatoncollege.edu/sexual-assault/friend/>. A formal complaint is not necessary to trigger this part of the College's process.

- (b) Disclosures Regarding Law Enforcement. The Title IX Director will notify the Complaining Individual: (1) about the availability of the Policy; (2) about the right to report (or decline to report) the matter to Public Safety and/or to local law enforcement; and (3) that a report to law enforcement will not change the College's duty to respond to the matter but it may briefly delay the timing of any investigation if a law enforcement agency requests that the College delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct.
- (c) Policy on Retaliation. The Title IX Director will inform the Complaining Individual about the policy regarding retaliation. Moreover, the College will respond to any reports of retaliation immediately.
- (d) Threat Assessment. The Title IX Director will assess the reported conduct to determine whether the circumstances pose a threat to the health or safety of the College community and warrant the issuance of a Timely Warning, an interim Order of No Contact for any persons, or any other interim protections.
- (e) Determination of a Potential Violation. If the Title IX Director determines, after speaking with the Complaining Individual, that the reported conduct would not, in any way, implicate the Policy, the Title IX Director will advise the Complaining Individual of such in writing and, if appropriate, refer the reported conduct to the appropriate administrator for handling consistent with any other pertinent College policy. If new information is subsequently provided, the decision whether or not to investigate under the Policy will be reevaluated. If the Title IX Director determines the reported conduct could, in any way, violate the Policy, the Title IX Director will contact the Complaining Individual to discuss that determination and work with the Complaining Individual to initiate the conduct process. If, at this time, the Complaining Individual requests that the process not move forward, the College, in accordance with Section V(6) of the Policy, will weigh that request and the reasons for it against the College's obligation to address any risk of harm to the Complaining Individual or other individuals in the community and the

nature of the incident or conduct at issue. Mediation is not an option for resolving allegations involving any form of Sexual Violence.

(4) **Investigation.** If, during the Initial Assessment, it is determined that the reported conduct is potentially a violation of the Policy and the Complaining Individual initiates the conduct process or the College otherwise determines that it must move forward, the formal investigation phase will commence and include the steps outlined below.

- (a) **Notice of Investigation.** The Title IX Director, in consultation with the Procedural Coordinator, will send a copy of any written complaint along with a written notice to the Respondent that will include a description of the allegations, the portions of the Policy that are alleged to have been violated, and any interim measures in place about which the Respondent must be made aware. This written notice does not constitute a finding or a determination of responsibility, but it will re-affirm to both parties that they are not to retaliate against each other, as that term is defined in the Policy.
- (b) **Assignment of Procedural Advisors.** The Title IX Director, in consultation with the Procedural Coordinator, will offer the Complainant and the Respondent a Procedural Advisor. Parties may elect not to utilize a Procedural Advisor, and may select any other person to serve as an advisor-of-choice, including an attorney. Parties may also elect to participate in the conduct process without utilizing a Procedural Advisor or an advisor-of-choice. Procedural Advisors or advisors-of-choice may be present during any meeting, interview, or hearing held pursuant to the Policy.

Individuals participating in the conduct process as a Procedural Advisor or as an advisor-of-choice must comply with the Policy in performing their respective roles. Procedural Advisors and advisors-of-choice may not speak on behalf of the individual they are advising while present at any meeting, interview, or hearing, although they may ask to suspend any meetings, interviews, or hearings briefly and in a reasonable and non-disruptive manner to provide private consultation related to the matter in progress. They may also ask clarifying questions on a limited basis that do not interfere with the proceeding in question. Procedural Advisors or advisors-of-choice are subject to the same confidentiality expectations applicable to others in attendance. Accommodations, including scheduling of meetings, interviews, or hearings, will not be made for any advisers if they unduly or unnecessarily delay the process.

- (c) **Designation of Investigator(s).** The Title IX Director, in consultation with the Procedural Coordinator, will designate at least one internal investigator to conduct a prompt, fair, equitable and impartial investigation of the reported conduct and prepare a report of investigative findings (the “Investigative Report”). At the College’s discretion, more than one investigator may be assigned. The College may also exercise discretion in assigning an external investigator to conduct the

investigation with the College's internal investigator. In addition, the College may assign an external investigator, without assigning an internal investigator.

All investigators – internal or external – will be selected from a group of qualified and trained individuals employed by the College or engaged by the College for the purpose of conducting investigations under the Policy. The Title IX Director will provide the parties with the name of the investigator(s). As soon as possible, but no later than three (3) business days after receiving notice of the identity of the investigator(s), the parties should inform the Title IX Director (in writing) of any conflicts or potential conflicts of interest with regard to the selected investigator(s). The Title IX Director, in consultation with the Procedural Coordinator, will consider the nature of the conflict and determine if different individuals should be assigned as investigator(s). The Title IX Director's decision regarding any conflicts is final.

- (d) Nature of the Investigation. The investigation will include separate interviews with the Complainant, the Respondent, and any witnesses whom the investigator(s) believe will provide necessary and relevant information. The investigation may include the review of documentation or other items relevant to the reported conduct. The investigator(s) will provide the parties with written notice of meetings at which their presence is required.

The investigator(s) will provide a statement to each party participating in an interview that explains the applicable rules of confidentiality. Such rules include that any information learned, including questions asked or statements made by the investigator(s), are to be kept confidential and not shared with anyone except the parties' Procedural Advisors. The investigator(s) will also explain that the Director of Title IX Compliance will be available to provide support should a party wish to discuss anything learned during the course of the hearing or have any questions regarding the level of confidentiality that the College expects to maintain the privacy of both parties.

- (e) The Parties' Identification of Potential Witness(es) and Documentation. The parties have the opportunity (and are expected) to provide the investigator(s) with the identities of potential witnesses who have specific information about the reported conduct and with whom they would like the investigator(s) to speak. The parties also have the opportunity (and are expected) to provide the investigator(s) any documentation or other evidence they would like to be considered. All information described in this section must be presented to the investigator(s) in writing and include a brief description as to how the persons, documents, and/or evidence are relevant to the reported conduct. This information must be provided to the investigator(s) during the investigation phase and without delay upon becoming aware of it. The investigator(s) will exercise discretion in their determination of what information to consider and which potential witnesses identified by the parties can provide relevant information to the investigation.

- (f) **Investigative Report.** At the conclusion of the investigation phase, the investigator(s) will prepare an investigative report, which should include a summary of the factual information presented during the investigation phase, a separate section where the investigator(s) point out relevant consistencies or inconsistencies (if any) between different sources of information, and a separate section describing the investigator(s)' perception of the demeanor of the individuals interviewed. The investigative report will not include a determination by the investigator(s) as to whether a party has violated the Policy or what sanctions may be appropriate.

(5) **Hearing Board.** At the conclusion of the investigation phase, the hearing board process will commence and include the steps outlined below.

- (a) **Convening the Hearing Board.** The Procedural Coordinator will convene a three member hearing board (the 'Board') from a previously established pool of College community members trained to decide Sexual and Gender-Based Misconduct cases. This pool will not include students. The Procedural Coordinator will designate a Board Chairperson (the 'Chair'). The Procedural Coordinator will provide the parties with the name of the persons assigned as the Board members for their case. As soon as possible, but no later than three (3) business days after receiving notice of the identity of the assigned Board members, the parties should inform the Procedural Coordinator (in writing) of any conflicts or potential conflicts of interest in regard to the selected members assigned to the Board. The Procedural Coordinator will consider the nature of the conflict and determine if different individuals should be assigned as members to the Board. The Procedural Coordinator's decision regarding any conflicts is final. The Procedural Coordinator will then submit the investigative report to the Board members and set a subsequent date for the Board to meet to determine responsibility and appropriate sanctions, if any.
- (b) **Notice of Hearing.** The Procedural Coordinator will notify the Complainant and the Respondent in writing of the time and date of the hearing at least five (5) business days prior to the hearing date.
- (c) **Review of the Case File.** All relevant reports, witness statements, the Complainant's statements, the Respondent's statements, and other relevant written materials generally will be available for review by the Complainant and the Respondent at least three (3) business days prior to the hearing.
- (d) **Request for Participation of Witnesses.** The Complainant and the Respondent will have the opportunity to make a request to the Procedural Coordinator for witnesses to participate in the hearing. The Chair, in consultation with the Procedural Coordinator, will determine which witnesses will participate based on the relevance of their testimony but will not exclude any relevant testimony. The Complainant and the Respondent must notify the Procedural Coordinator of any witnesses who they request to participate in the hearing at least two (2) business

days prior to the hearing. The Complainant and the Respondent will be notified of the names of the witnesses that the Chair has determined will be contacted to participate in the hearing no later than twenty-four (24) hours prior to the hearing.

- (e) Use of Procedural Advisors and Advisors-of-Choice. The Complainant's and the Respondent's Procedural Advisor or advisor-of-choice may attend the hearing. Neither the Complainant nor the Respondent may have any other advisor other than the Procedural Advisor or advisor-of-choice present during the hearing. Procedural Advisors and advisors-of-choice may not speak on a party's behalf during the course of the hearing and will be bound by the rules of confidentiality governing the hearing.
- (f) Board Review. During the hearing, normally only the investigators, the Complainant, the Respondent, Board members, witnesses, Procedural Advisors/advisors-of-choice and the Procedural Coordinator may be present. A Board hearing may be conducted in the absence of the Complainant or the Respondent, or witnesses, at the discretion of the Chair and/or the Procedural Coordinator. Witnesses may be present only when sharing information with the Board, unless noted at the discretion of the Chair.

At the beginning of the hearing, the Procedural Coordinator will make a statement reminding each party participating in the hearing of the applicable rules of confidentiality. Such rules include that any information learned, including questions asked or statements made by the Board or the Procedural Coordinator, are to be kept confidential. The Procedural Coordinator will also explain that the Director of Title IX Compliance will be available to provide support should a party wish to discuss anything learned during the course of the hearing.

The Complainant and the Respondent will not appear at the same time during the course of the hearing, and they may not directly question each other or witnesses. Both parties will be provided an opportunity to request that additional questions be directed by the Chair to other individuals appearing at the hearing. The Chair may use discretion in determining whether or not to ask such questions so long as the discretion is equitable for both parties.

The Board may ask questions of the Complainant, the Respondent, the witnesses, and the investigator(s). The Board may go into closed session, temporarily excusing all participants, upon the vote of a majority of the members of the Board.

If the Complainant or the Respondent does not participate in the hearing or chooses not to speak, Board hearing procedures will still be followed and sanctions, if appropriate, will be imposed. The Complainant, the Respondent and the investigator(s) may be given the opportunity to make opening and closing comments.

The parties are expected to participate in the proceeding in a civil and respectful manner. The Chair reserves the right to remove any individual who impedes the Board hearing. A case may be recessed or continued at the Chair's discretion. At the request of a hearing participant, the Chair will take appropriate action to maintain a safe environment for all participants in the hearing, including providing for the presence of a Public Safety officer at the site of the hearing.

Alternative testimony options that do not compromise the integrity of the hearing process may be requested by either the Complainant or the Respondent. Options that provide accommodations for individuals with a disability, remote participation where necessary, or a safe space for participation while not depriving the parties of their rights in the process may be requested and will be considered. The Procedural Coordinator, in consultation with the Chair, determines the appropriateness of these requests and assumes responsibility for these arrangements.

All information shared at the hearing may be audio recorded for use by the Board only. The Board's deliberations will not be otherwise audio recorded. The audio recording is the property of the College. It will ordinarily be preserved until the conclusion of the student conduct hearing process, including the appeals period, at which point it will be destroyed. The parties and Board hearing participants are not permitted to make video, audio, or other electronic, photographic, or digital recordings of any meetings, parts of the case file, or proceedings held pursuant to the Policy, including the Board hearing. The Procedural Coordinator may make exceptions to this prohibition in limited circumstances if the Procedural Coordinator concludes, in the Procedural Coordinator's sole discretion, that a recording is warranted, and upon written request of the party seeking the recording that explains the need for the recording.

The Procedural Coordinator will be responsible for keeping minutes of the hearing which will serve as the record.

- (g) Board Determination. Following completion of the hearing, only Board members and the Procedural Coordinator may be present for the deliberation. The Board must use the preponderance of the evidence standard when determining whether a Respondent is responsible for violation(s) of the Policy. The Board members will decide by majority vote whether or not the Respondent is responsible for the violation(s) of the Policy. The Procedural Coordinator will have no vote.
- (h) Sanctions. If the Board determines the Respondent is responsible for violation(s) of the Policy, the Board will determine the sanction(s) to be imposed. Pertinent records of previous disciplinary actions may be used in determining an appropriate sanction. Sanctions may include but are not limited to the following: expulsion; suspension; probation; reprimand; warning; restitution; education/counseling; Order of No Contact; restriction from extracurricular

programs or activities; loss of leadership opportunity or positions in activities; housing restriction/relocation; and/or restriction from College employment.

- (i) Notice. Within twenty-four (24) hours of the deliberation of the Board, the Procedural Coordinator will present the determination and sanctions to the Complainant and Respondent. The Procedural Coordinator will send written notice of the same and a copy of the record of the Board hearing to the Complainant and Respondent within five (5) business days.

(6) Appeals of Decisions. At the conclusion of the Board phase, either party may file an appeal. The appeal process includes the steps outlined below.

- (a) Filing an Appeal. Within five (5) business days of receiving written notice of the Board's determination on responsibility and sanctions, either the Complainant or the Respondent may appeal the decision by submitting to the Procedural Coordinator a letter stating why the party requesting the appeal believes the determination of responsibility and/or the sanctions were inappropriate.
- (b) Content for Appeal. A party may appeal only on the following grounds:
 - (i) newly discovered material information that was not known to the appellant party during the investigation and during the hearing and which likely would have changed the finding of responsibility or the sanction imposed had it been available; or
 - (ii) substantial procedural error that materially prejudiced the appellant party.

The party submitting the appeal must set forth in detail the grounds for review and must attach all materials that the party wishes to have considered in the appeal process. The Procedural Coordinator will provide a copy of the appeal submitted by one party to the other party.

- (c) Appellate Officer. The Appellate Officer will decide the merits of any appeal and in so doing, may consult with the investigator(s), the Board members, and any other individual that the Appellate Officer deems appropriate.

The purpose of the appeal is not to rehear the case; rather, it is to determine if there is sufficient information presented to allow a reconsideration of the Board's decision.

- (d) Enforcement of Board Decision. Any action assessed or recommended by the Board may be enforced, in whole or in part, pending the outcome of the appeal at the sole discretion of the Procedural Coordinator, including a removal or suspension.

- (e) **Appeal Determinations.** The Appellate Officer will review the appeal and render a decision usually within ten (10) business days.

The Appellate Officer may affirm all or part of the decision (which includes the sanction, as well as the determination of responsibility) or may refer the matter to the investigator(s) or Board for further consideration. If the matter is referred back to the investigator(s) or Board, the Appellate Officer will provide specific instructions with the referral. In the event of a referral, the Appellate Officer may mandate such further proceedings as the Appellate Officer deems appropriate under the circumstances, consistent with the Policy.

The decision of the Appellate Officer will be provided in writing and is final. The Procedural Coordinator will inform the parties simultaneously and in writing of the outcome of the appeal.

V. ADDITIONAL MATTERS

(1) **Request for Delay of Proceedings.** If the Complainant, the Respondent, or law enforcement agencies request that the College conduct proceeding be delayed because the conduct in question is also being addressed in a civil or criminal court, the College will review the request, but it retains the right to hear the case before, after, or during the same time as the civil or criminal case, and to implement appropriate action (including but not limited to interim Orders of No Contact, removal from campus, residence facilities, and/or classes, interim removals, or suspensions) to maintain the safety of the campus. The campus conduct process shall be confidential to the extent possible and as allowed by law and considerations of safety.

(2) **Duty of Honesty.** All parties and witnesses are obligated to be completely honest during the course of the entire process set forth in the Policy. Any person who knowingly makes a false statement – either explicitly or by omission – in connection with any part of the process may be subject to separate College disciplinary action.

(3) **Duty of Cooperation.** All parties and witnesses are obligated to cooperate with the Title IX Director and any persons charged with implementing the Policy. Any person who knowingly interferes with the actions taken to implement the reporting, investigation, or resolution of matters under the Policy may be subject to separate College disciplinary action.

(4) **Prohibitions.** Neither party will be permitted to directly question or cross-examine the other party during the investigation. Moreover, the investigator(s) and/or the Board generally will not consider information related to either party's character or sexual history outside of the conduct in question. However, where there is evidence of pattern of conduct similar in nature by the Respondent, either prior to or subsequent to the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant and probative to the investigators' report and/or the Board's determination of responsibility or sanction. In those instances, the Title IX Director and the Procedural

Coordinator will determine whether the previous incident was substantially similar to the conduct cited in the report and/or indicates a pattern of behavior and substantial conformity with that pattern by the Respondent. The Title IX Director and the Procedural Coordinator may choose to provide this information to the investigator(s), with appropriate notice to the parties. Additionally, either party or an identified witness may seek to provide to the investigator(s) and/or the Board: (1) information concerning the prior relationship of the parties; or (2) information indicating that a person other than the Respondent is responsible for the misconduct alleged. The investigator(s) and/or the Board will review any such information and determine if it is relevant and probative to the investigators' report and/or the Board's determination of responsibility or sanction. In no case will the sole fact of a current or previous consensual dating or sexual relationship between the parties imply consent to the reported conduct or preclude a finding of responsibility for a Policy violation.

(5) Amnesty for Students Reporting Misconduct. The College encourages reporting under the Policy and seeks to remove barriers to reporting. The College generally will not hold a student who reports conduct or is a witness during an investigation under the Policy accountable for disciplinary violations of the College's Community Standards prohibiting use of drugs or alcohol. Under limited circumstances, a person who reports conduct under the Policy may be held accountable for his or her own misconduct if, in the College's discretion, it is determined that the behavior placed the health and safety of any person at risk, or if it created a danger to the College community. The College retains the right to require students to attend counseling or drug/alcohol related courses even in circumstances in which disciplinary conduct will not be pursued under the Policy.

(6) Respect for Privacy. The College values the privacy of individuals involved in the reporting, investigation, and/or resolution of matters subject to the Policy. The U.S. Department of Education has provided guidance indicating that there are situations in which it may be necessary for an institution to override a request for privacy in order to meet its Title IX obligation. In the event circumstances result in the College overriding a request for privacy or confidentiality to meet its Title IX obligation, the College will do so with the utmost sensitivity and respect for the circumstances and the individuals involved.

The factors the U.S. Department of Education suggest institutions consider in determining whether it can grant a request for privacy include circumstances that suggest there is an increased risk of the alleged perpetrator committing additional acts of Sexual Violence or other violence (e.g., whether there have been other Sexual Violence complaints about the same alleged perpetrator, whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence, whether the alleged perpetrator threatened further Sexual Violence or other violence against the student or others, and whether the Sexual Violence was committed by multiple perpetrators), circumstances that suggest there is an increased risk of future acts of Sexual Violence under similar circumstances (e.g., whether the student's report reveals a pattern of perpetration, whether the Sexual Violence was perpetrated with a weapon, the age of the student subjected to the Sexual Violence, and whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

(7) **Special Situations.** In limited circumstances, when the safety of the College community is at risk, if the material facts are undisputed, if there are extenuating circumstances involving either of the parties, or if the Title IX Director, in consultation with appropriate administrators, determines it is in the best interest of the College and/or the community, the College retains the right to determine, in its sole discretion, if it will address a report of conduct that falls under the Policy administratively and outside of the process described in the Policy. Whenever the College determines that it will exercise this provision, its actions will be in accord with Title IX and it will stay true to the processes described in the Policy to the extent possible. The College will also clearly explain to the parties any alternate processes it will take in the given situation.