

Non-Title IX Sexual and Gender-based Misconduct Policy for Students

Home » Campus Life » Safety on Campus » Sexual & Gender-Based Misconduct Response and Resources » Sexual and Gender-based Misconduct Policies for Students » Non-Title IX Sexual and Gender-based Misconduct Policy for Students

Wheaton College Non-Title IX Sexual and Gender-Based Misconduct Policy for Students

Table of Contents

- I. INTRODUCTION
- II. SCOPE
- III. DEFINITIONS
- IV. PROHIBITED CONDUCT
- V. PROCESS FOR RESPONDING TO REPORTS
- VI. GRIEVANCE PROCESS
- VII. ADDITIONAL MATTERS

I. INTRODUCTION

The Wheaton College Non-Title IX Sexual and Gender-Based Misconduct Policy for Students (the “Policy”) has been developed to provide a prompt and equitable investigation and adjudication process in cases that implicate sexual and gender-based misconduct **and** that fall outside of the jurisdiction of Title IX and/or do not meet established harassment thresholds under Title IX. The Policy provides recourse for individuals regardless of that person’s sex, sexual orientation, gender identity or gender expression.

It is a priority of the College that all persons have equitable access to reporting, resources and all aspects of the grievance process. Historically excluded identities often experience increased barriers to reporting. The College has a number of identity-focused support offices for students including the Office of Equity and Belonging, the Marshall Center for Intercultural Learning, the Center for Social Justice and Community Impact, and Accessibility Services. Confidential Resources including the Counseling Center and the College’s Confidential Resource Person (Religious and Spiritual Life Coordinator) are also available to provide confidential support. Additionally, any students seeking accommodations in the response to a report of Sexual and Gender-Based Misconduct, including the formal grievance process, may contact Accessibility Services at accessibility@wheatoncollege.edu.

For more information about the Policy or to report Prohibited Conduct, please contact Caraline Somerville, Title IX Coordinator and Bias Incident Response Officer (the “Coordinator”), at 508-286-3261 or somerville_caraline@wheatoncollege.edu or visit the Emergency Information page on the College’s website . This page includes descriptions of counseling, health, safety, academic and other support services available as well as information about preserving evidence and contact information for seeking medical assistance.

Please note that the Policy will not be applied to abridge the use of curricular activities, particular textbooks, or reasonable classroom activities and will be interpreted and implemented in a manner consistent with the College’s commitment to academic freedom.

II. SCOPE

The Policy outlines how the College will respond when the Coordinator receives notice of alleged Prohibited Conduct that is sexual or gender-based, by a student of the College occurring *outside* of the College’s education program or activity that creates a sex-based hostile environment *within* the College’s education program or activity and/or that is sexual or gender-based that does not meet established harassment thresholds under Title IX.

III. DEFINITIONS

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

Advisor. An individual who is selected by a party or assigned to a party by the College (who may be, but is not required to be, an attorney) to provide information and procedural advice regarding the Policy and the College’s grievance process, who may inspect and review evidence, and who can conduct cross-examination on behalf of the party during the hearing.

Appellate Officer. A trained and qualified individual other than the Coordinator or the investigator(s) who is an employee of the College or engaged by the College to review and determine appeals under the Policy.

Complainant. A person who is alleged to have experienced Prohibited Conduct, and who, at the time they file a Formal Complaint, is currently participating in, or attempting to participate in, the College's education programs or activities.[2]

Confidential Resource. Staff, faculty, or third-party partners 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 providers available to students for the purpose of providing information, support and resources regarding the Policy.

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. 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. Consent at one time does not imply Consent at any other time. 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 certain 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.[3]

Dating Violence. Violence committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and (2) where the existence of such a relationship will be determined based on a consideration of the following factors (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.

Deputy Title IX Coordinator ("Deputy Coordinator"): A College official and member of a Designated Official's Office who is specifically designated as a Deputy Coordinator to support report intake and the implementation of Supportive Measures for students, faculty and staff, respectively.

Deputy Title IX Coordinator for Students: Zachary Irish, Associate Vice President for Student Affairs: 508-286-8218, irish_zachary@wheatoncollege.edu

Deputy Title IX Coordinator for Staff: Omaira Roy, Associate Vice President for Human Resources: 508-286-3544, roy_omaira@wheatoncollege.edu

Deputy Title IX Coordinator for Faculty: Avanti Seymour, Director of Faculty Affairs and Academic Operations: 508-286-3493, seymour_avanti@wheatoncollege.edu

Deputy Title IX Coordinator for Athletic Compliance: Lisa Yenush, Senior Associate Director of Athletics/SWA: 508-286-3982, yenush_lisa@wheatoncollege.edu

Designated Official. A College official with authority to institute corrective measures on behalf of the College. Designated Officials include staff in the Office of the Dean of Students, the Office of the Provost, and Human Resources.

Domestic Violence. Actions of violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Massachusetts. In interpreting the term "violence" in this definition, the College will consider, but is not limited to, the types of actions that constitute felonies or misdemeanors under Massachusetts state law.

Formal Complaint. A document filed by a Complainant alleging Prohibited Conduct against a Respondent and requesting that the College investigate the allegation of Prohibited Conduct. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. As outlined below, in certain limited situations, the Coordinator, in their sole discretion, can also sign a Formal Complaint.

Incapacitation. The inability, temporarily or permanently, to give consent, because: (1) an individual is mentally and/or physically helpless or unaware of where they are, how they got there, or why or how they became engaged in sexual activity due to drug or alcohol consumption, either voluntarily or involuntarily; or (2) an individual is unconscious, asleep or otherwise unaware that the sexual activity

is occurring. Where alcohol is involved, Incapacitation is a state beyond drunkenness or intoxication. Some indicators of Incapacitation may include, but are not limited to, lack of control over physical movements, lack of awareness of circumstances or surroundings, or the inability to communicate for any reason.[3]

Non-Title IX Sexual Harassment. Conduct on the basis of sex that includes:

1. an employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct; or
2. unwelcome conduct determined by a Reasonable Person to be so severe, pervasive, or objectively offensive that it effectively denies a person equal access to the College's education program or activity.

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

Reasonable Person. A reasonable person under similar circumstances and with similar identities to the Complainant.

Respondent. An individual who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct.

Retaliation. Any acts or words that intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Policy.

Sexual Assault. Sexual Assault includes: (1) the 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; (2) the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving Consent because of their age or because of their temporary or permanent mental incapacity; (3) sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; and (4) sexual intercourse with a person who is under the statutory age of consent.

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 implicate [Title-IX specific] definitions for harassment.

Stalking. Engaging in a course of conduct directed at a specific person that would cause a Reasonable Person to: (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress. For the purpose of this definition, course of conduct means two or more acts, including, but not limited to acts in which the stalker 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. Substantial emotional distress means significant mental suffering or anguish that may, but does not require medical or other professional treatment or counseling.

Supportive Measures. Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter Prohibited Conduct. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Timely Warning. A warning issued by the Director of Campus 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) and its implementing regulations (34 C.F.R. Part 106).

The Coordinator. The College's Title IX Coordinator and Bias Incident Response Officer or a designee.

IV. PROHIBITED CONDUCT

The following conduct, as defined above, is prohibited:

- (1) **Dating Violence;**
- (2) **Domestic Violence;**
- (3) **Non-Title IX Sexual Harassment;**
- (4) **Sexual Assault;**
- (5) **Sexual Exploitation;**
- (6) **Stalking;** and
- (7) **Retaliation.**[4]

V. PROCESS FOR RESPONDING TO REPORTS

This section outlines how the College will respond to a report of conduct that could constitute Prohibited Conduct (occurring within the scope outlined under Section II) and determine what, if any, Supportive Measures and additional action is appropriate. The College retains the discretion to designate another appropriate College employee to satisfy the various roles set forth below and as appropriate to the role and situation at hand.

1. Reporting Prohibited Conduct.

Any individual seeking to report allegations of sexual and gender-based misconduct may do so by reporting via the Sexual and Gender-Based Misconduct Reporting Form,[5] or by contacting the Coordinator via mail, email (somerville_caroline@wheatoncollege.edu), phone (508-286-3261), or in person at the Title IX and Bias Incident Response Office. Reports may also be made directly to any Deputy Title IX Coordinator, as defined above and including contact information above. Individuals may submit the Sexual and Gender-Based Misconduct Form anonymously. [6]

2. Reporting Obligations.

Employee obligations to report to the Coordinator/Deputy Coordinator allegations of Prohibited Conduct vary based on the role of the employee. The following outlines employee reporting obligations:

- a. Confidential Resources are not required to report allegations of Prohibited Conduct that come to their attention, except in limited circumstances where a reporting obligation exists under the law. When acting in their Confidential Resource role, Confidential Resources will inform individuals of those limited circumstances.
- b. Designated Officials, as defined above, as well as the College President, the Vice President for Finance and Administration, the Associate Vice President of Legal Affairs, the Director of Counseling and Health Services, [7] Campus Safety staff, SAIL and Residential Life staff, including residential life coordinators and residential advisors, Athletics Department staff, and Academic Advising staff, including peer advisors, [8] **must** within forty-eight (48) hours, report to the Coordinator/Deputy Coordinator allegations of Prohibited Conduct that come to their attention.
- c. All other staff and faculty (not listed in paragraph (a) and (b) above) **may** report to the Coordinator allegations of Prohibited Conduct that come to their attention. However, where an individual alleges that a faculty member, staff member, vendor, or volunteer has engaged in Prohibited Conduct, all staff and faculty (other than Confidential Resources) **must**, within forty-eight (48) hours, report the allegations to the Coordinator/Deputy Coordinator.[9]

3. Response to reports of Prohibited Conduct.

The College will respond to all reports of Prohibited Conduct in a prompt, equitable, and effective manner. After receiving notice of conduct that could constitute Prohibited Conduct, the Coordinator/Deputy Coordinator 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 parties and the College community and to determine the next steps for investigating the reported conduct and the need for any Supportive Measures. These initial steps include, but are not limited to, the following:

- a. Supportive Measures. The Coordinator/Deputy Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, and inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint. As defined in Section III above, the College will provide Supportive Measures but will remain cognizant of the burden a specific Supportive Measure may have on the other party. Factors to be considered in determining reasonable supportive measure may include: the specific need expressed by the party; the severity and/or pervasiveness of the allegations; any continuing effects on the party; whether the parties share the same residence hall, dining hall, class, extracurricular activities, transportation and/or job location; and whether other judicial measures have been taken to protect a party or the

- parties. Parties may at any time request that the Coordinator/Deputy Coordinator review Supportive Measures.
- b. Disclosures Regarding Law Enforcement. The Coordinator/Deputy Coordinator will notify the Complainant about the right to report (or decline to report) the matter to Campus Safety and/or to law enforcement, to receive assistance from campus authorities in contacting law enforcement, and to request a court-issued protective order.[10] 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. If the College learns that a form of sexual misconduct occurred with regard to an individual under the age of eighteen (18), the College may be required to report the information to the Massachusetts Department of Children and Families, as well as law enforcement.
 - c. Policy on Retaliation. The Coordinator/Deputy Coordinator will inform the Complainant about the Policy's prohibition of Retaliation and that the College will respond to any reports of retaliation promptly.
 - d. Threat Assessment. The Coordinator, in consultation with other College administrators, 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 Order of No Contact for any persons, or any other interim protections including the facilitation of an emergency removal from campus in accordance with Section VII(6) of the Policy.
4. **Filing a Formal Complaint.** The Coordinator/Deputy Coordinator will explain to the Complainant the process for filing a Formal Complaint. If, at this time, the Complainant chooses not to file a Formal Complaint, the Coordinator, in accordance with Section VII(5) 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 Complainant or other individuals in the community and the nature of the incident or conduct at issue. In certain circumstances, the Coordinator may file a Formal Complaint. Where the Coordinator signs a Formal Complaint, the Coordinator is not a Complainant or otherwise a party to the matter.
5. **Dismissal and Consolidation of Formal Complaints.** As outlined below, the College may dismiss Formal Complaints upon their filing or during the course of the grievance process. Additionally, the College maintains discretion to consolidate Formal Complaints.
- a. If the conduct alleged in a Formal Complaint: would not constitute Prohibited Conduct, even if proved; then the College will dismiss the Formal Complaint with regard to that conduct under the Policy. The Coordinator will, 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 proceed under the Policy will be reevaluated.
 - b. The College may dismiss a Formal Complaint or any allegations therein, if at any time during the investigation: a Complainant notifies the Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; the Respondent is no longer enrolled at the College; or specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
 - c. Upon a dismissal pursuant to this section, the College will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.
 - d. Consolidation of Formal Complaints. The College may consolidate Formal Complaints as to allegations of Prohibited Conduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the same facts or circumstances.

VI. GRIEVANCE PROCESS

This section outlines the College's grievance process.

1. **Investigation.** If a Formal Complaint is filed, the formal investigation phase will commence and include the steps outlined below.
 - a. Notice of Investigation. The Coordinator will provide the parties with a copy of the Formal Complaint, the Policy, and written notice of the investigation which will include:
 - i. notice of the allegations potentially constituting Prohibited Conduct and sufficient details known at the time, including: (1) the identities of the parties involved in the incident, if known; (2) the conduct allegedly constituting Prohibited Conduct as defined in the Policy; and (3) the date and location of the alleged incident, if known;
 - ii. a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
 - iii. a statement informing the parties that they may have an Advisor;

- iv. notice of Section VII(2) of the Policy which prohibits knowingly making false statements or knowingly submitting false information during the grievance process;
 - v. the availability of Supportive Measures; and
 - vi. a reminder of the Policy's prohibition of Retaliation.
- b. Designation of Investigator(s). When appointing the investigator(s), the College will designate at least one internal and/or external investigator to conduct a prompt, fair, equitable and impartial investigation of the reported conduct and prepare an investigative report.[11] At the College's discretion, more than one investigator may be assigned. Further, the Coordinator may serve as Investigator. The Coordinator will provide the parties with the name of the investigator(s). As soon as possible, but no later than three (3) days after receiving notice of the identity of the investigator(s), the parties can inform the Coordinator (in writing) of any conflicts or potential conflicts of interest with regard to the selected investigator(s). The Coordinator will consider the nature of the conflict and determine if a different individual should be assigned as investigator(s). The Coordinator's decision regarding any conflicts is final.
- c. Nature of the Investigation. Investigative meetings may be conducted in person or virtually, as required by federal mandate. The following are the roles and processes to be followed during the investigation.
- i. The investigation provides an opportunity for fact-finding and will include separate interviews with the Complainant, Respondent, and any relevant witnesses. [12]
 - ii. The investigator(s) will provide the parties with advance notice of meetings at which their presence is required. Parties will be afforded an equal opportunity to present witnesses and other inculpatory and exculpatory evidence.
 - iii. Each party may have a single Advisor present during any meeting, interview, or hearing, held pursuant to the Policy. The Advisor may advise their respective party privately, but cannot act as a speaking advocate at a meeting. College staff and internal or external investigators may delay or terminate meetings, remove or dismiss Advisors, and/or proceed with the investigation if an Advisor is disruptive or otherwise refuses to comply with the requirements of this policy. An Advisor is subject to the same privacy expectations applicable to others in attendance and must also abide by any applicable state and federal laws. Accommodations, including scheduling of interviews or reviews, generally will not be made for any advisors if they unduly delay the process. The Advisor is not permitted to attend a meeting or proceeding without the party they are advising being present without the prior approval of the Coordinator, at their discretion. The College reserves the right to take appropriate action regarding any Advisor who disrupts the process, or who does not abide by the restrictions on their participation.
 - iv. At no point will the investigation require both parties to be in the same room. At no point will either party be permitted to question or cross-examine the other party or any witness directly during the investigation or appeal process. The Investigator(s) will provide each party with an opportunity to present questions which the Investigator(s), in their sole discretion, may ask of any other party or witness.
- d. Content of Investigative Report. The investigator(s) will create an investigative report that:
- i. fairly summarizes relevant evidence and relevant consistencies or inconsistencies (if any) between all sources of information;
 - ii. includes the investigator(s)' assessment of the credibility of parties and witnesses;
 - iii. contains as attachments any relevant evidence gathered, whether inculpatory (i.e., proving the responsibility of a party) or exculpatory (i.e., proving that a party did not commit the conduct alleged);
 - iv. outlines the Investigator(s) findings of fact and conclusions regarding the application of the Policy to the facts; and
 - v. provides a determination of responsibility using the preponderance of the evidence standard.
- e. Sanctions. If the Investigator(s) determines that the Respondent is responsible for violation(s) of the Policy, the investigator will refer the Investigative Report and finding to the Office of the Dean of Students to issue disciplinary sanctions the College imposes on the Respondent and any remedies provided by the College to the Complainant (disciplinary sanctions and remedies include dismissal, suspension, probation with or without conditions, reprimand, warning, restitution, education, counseling, Orders of No Contact, restriction from extracurricular programs or activities, loss of leadership opportunities or positions in activities, housing restrictions and / or relocation; and restrictions from College employment). Pertinent records of previous disciplinary action may be used in determining an appropriate sanction.
- f. Notice. The College will provide written notice of the determination along with access to the Investigative Report simultaneously to the parties not later than seven (7) business day after a determination is made.[14]
The determination will contain the College's procedures and permissible bases for the Complainant and Respondent to appeal.

2. Appeals. Either party may appeal a determination regarding responsibility.

- a. Filing an Appeal. Within ten (10) days of receiving written notice of the Investigator's determination on responsibility and sanctions, either the Complainant or the Respondent may appeal the decision by submitting to the Coordinator a letter stating why the party requesting the appeal believes the determination of responsibility and/or the sanctions were inappropriate.
 - b. Bases for Appeals. Appeals must be based on one or more of the following:
 - i. procedural irregularity that affected the outcome of the matter;
 - ii. new evidence that was not reasonably available at the time the determination regarding responsibility or sanction was made, that could affect the outcome of the matter; and
 - iii. the Coordinator, or investigator(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
 - c. Notice of Appeal and Opportunity to Respond. The College will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. The Complainant and Respondent will be provided with a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
 - d. Appellate Officer. The Appellate Officer will decide the merits of any appeal and in so doing, may consult with the Coordinator, the investigator(s), and any other individual that the Appellate Officer deems appropriate.
 - e. Appeal Determinations. 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 Investigator's determination. 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) for further consideration. The Appellate Officer will provide specific instructions with any 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. When reaching an appeal determination, the Appellate Officer will issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties.
3. **Informal Resolution.** At any time prior to reaching a determination regarding responsibility, the College may determine appropriate and facilitate an informal resolution process such as mediation, that does not involve a full investigation and adjudication, provided that the College:
- a. provides to the parties a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations,^[9] and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
 - b. obtains the parties' voluntary, written consent to the informal resolution process; and
 - c. does not offer or facilitate an informal resolution process to resolve allegations that an employee engaged in Prohibited Conduct with a student.

VII. 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 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 and Cooperation.** 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 or knowingly submits false information – either explicitly or by omission – in connection with any part of the grievance process may be subject to separate College disciplinary action. All parties and witnesses are obligated to cooperate with the Coordinator 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.

(3) **Patterns of Conduct.** 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 determination of responsibility or sanction. In those instances, the 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 Coordinator may choose to provide this information to the investigator(s), with appropriate notice to the parties.

(4) 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 related to the incident. However, 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, as applicable, even in circumstances in which disciplinary conduct will not be pursued under the Policy.

(5) Respect for Privacy. The College values the privacy of individuals involved in the reporting, investigation, and/or resolution of matters subject to the Policy and will not disclose the identity of Complainants and Respondents except as necessary to carry out the grievance process and as otherwise permitted under state or federal law. There are situations in which it may be necessary for the College to override a request for privacy. In the event circumstances result in the College overriding a request for privacy or confidentiality, the College will do so with the utmost sensitivity and respect for the circumstances and the individuals involved.

The factors the College will 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 Complainant 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 Complainant's report reveals a pattern of perpetration, whether the sexual violence was perpetrated with a weapon, the age of the Complainant subjected to the sexual violence, and whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence)).

(6) Emergency Removal. The College may remove a Respondent from the College's education program or activity on an emergency basis, provided that the College undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

(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 Coordinator, 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 with any modifications to the process described in the Policy. Whenever the College determines that it will exercise this provision, its actions 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 and provide fair notice of those changes.

[2] If an individual is not participating in or attempting to participate in the College's education programs or activities and makes an allegation against a Respondent who is a current student at the College, the Coordinator may exercise discretion in signing a Formal Complaint in accordance with Section V(4).

[3] The relevant standard that will be applied is whether the Respondent knew, or a sober reasonable person in the same position should have known, that the other party was incapacitated and therefore could not consent to the sexual activity.

[4] Retaliation allegations may be consolidated with other Formal Complaints of Prohibited Conduct if the facts and circumstances significantly overlap. If the facts and circumstances do not significantly overlap, then the College retains discretion to adjudicate the allegation under a different but appropriate policy. For example, if a Respondent retaliates against a Complainant with regard to the filing of a complaint, that behavior could be consolidated with the other Prohibited Conduct alleged, provided appropriate notice is afforded. On the other hand, if the retaliatory conduct is committed by a Respondent's friend group who are not otherwise subject to a grievance under the Policy, that behavior could be adjudicated under another conduct policy which prohibits such behavior.

[5]<https://portal.wheatonma.edu/web/inside-wheaton/campus-life/community-reporting-options#sexu>

[6] It is generally helpful to the College for individuals to include their identity when reporting Sexual and Gender-Based Misconduct.

[7] The Director of Counseling and Health Services must report allegations of Prohibited Conduct that come to their attention to the extent permitted under any state confidentiality law requirements.

[8] For purposes of this reporting requirement, Peer Advisors are required to report only disclosures of alleged Prohibited Conduct made to them by their advisees.

[9] Provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint.

[10] Any person seeking to notify the College of a court-issued protective order should contact Campus Safety at 508-286-3333.

[11] All persons designated as investigators will receive no less than one annual training on issues relating to sexual misconduct, investigatory and hearing procedures.

[12] Investigators will ask questions and consider evidence in a manner consistent with Section VI(2)(c)(iv).

[13] All persons designated as decision-makers will receive no less than one annual training on issues relating to sexual misconduct, investigatory and hearing procedures.

[14] The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Last Update: August 11, 2022

[Scroll to Top](#)