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# Washington College Policy on Sexual Harassment and Discrimination\*

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## I. Policy Statement

Washington College complies with Title IX of the Educational Amendments of 1972 as well as the Title IX regulations released by the Department of Education on August 14, 2020. This policy prohibits all forms of sexual and gender-based harassment and discrimination. This policy also covers sexual misconduct that does not fall within the scope of the new federal regulations. This policy is effective December 15, 2021.

## II. Scope of the Policy and Jurisdictional Statement

This policy applies to all students; student organizations; College employees and contractors, including staff, faculty, and administrators; and all other persons that participate in Washington College's educational programs and activities, including third-party visitors on campus. This policy prohibits the conduct set forth in Section VI regardless of the Complainant and Respondent's relationship status and whether the Complainant and Respondent are members of the same or opposite sex or gender.

Washington College may investigate any alleged violation of this Policy that occurs in the context of a College program, or activity (including academic, educational, extracurricular, study abroad and internships, and other College programs), or that otherwise affects the working, living, or learning environments, regardless of whether that conduct occurred on or off campus. Regardless of where the conduct occurred, the College will review complaints to determine whether the conduct occurred in the context of its employment or educational program or activity or has continuing effects on campus or in an off campus sponsored program or activity, or whether the College otherwise has a substantial interest in the allegations. A substantial interest includes:

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);

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;

Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace or causes social disorder; or

Any situation that is detrimental to the educational interests or mission of the College.

All actions by a student that involve the use of the College's computing and network resources from a remote location, including but not limited to accessing email accounts, will be deemed to have occurred on campus. If the Respondent is unknown or is not otherwise subject to sanctions imposed by the College, the Title IX Coordinator will offer the Complainant supportive measures, remedies, and resources, such as, identifying appropriate campus and local resources and support options or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. Although the College may not, in certain instances, be in a position to conduct an investigation, it may provide appropriate resources or support to impacted individuals and where appropriate, the broader Washington College community.

### III. Definitions

**Confidential Resources:** Confidential Resources are certain employees that are required by law to protect confidentiality when acting in the course of their professional duties. Under most circumstances, Confidential Resources will not share information with other individuals without the express consent of the reporting party. An exception may be made if there is an imminent risk of danger to the reporting party or another individual.

**Complainant:** When used in this policy, "Complainant" is the person who is alleged to have experienced Prohibited Conduct.

**Formal Complaint:** A Formal Complaint is a document signed by the Complainant or the Title IX Coordinator alleging a violation of this Policy against a Respondent and requesting that the College initiate an informal or Formal Resolution of the Formal Complaint pursuant to this Policy and its procedures. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail as described in this section. For matters involving Title IX Prohibited Conduct, the Complainant must be participating or attempting to participate in the College's educational program or activities at the time of the filing of the Formal Complaint.

**Mandated Reporter:** Mandated Reporters are required to report allegations regarding conduct prohibited by this policy to the Title IX Coordinator. All employees of the Washington College are mandated reporters except student employees. Resident Assistants are the only student employees who are considered mandated reporters.

**Party or Parties:** Refers to the Complainant and the Respondent, collectively.

**Prohibited Conduct:** Conduct prohibited by this Policy, as defined in Section VI.

**Respondent:** When used in this policy, "Respondent" is the person who is alleged to have engaged in Prohibited Conduct.

### IV. Statement Regarding Privacy and Confidentiality

Washington College is committed to protecting the privacy of all individuals who are involved in a report of Prohibited Conduct. To the fullest extent practicable, consistent with fair and full investigation procedures, information related to a report of Prohibited Conduct will be shared only with those who "need to know" (i) to assist in the investigation or resolution of the report, or (ii) to allow the College to comply with other requirements under this Policy or state or federal law. Individuals who are involved in the review, investigation, or resolution of reports or Formal Complaints are trained to safeguard private information.

Complainants, Respondents, and any witnesses involved in a resolution process under this policy are strongly encouraged to exercise discretion in sharing information learned in such process in order to protect the privacy of the individuals involved, to safeguard the integrity of the process, and to avoid the appearance of retaliation. Complainants and Respondents are not restricted from discussing the allegations set forth in a Formal Complaint.

The College prohibits parties from distributing documents obtained in the course of their participation in matters under this Policy's accompanying procedures, including, but not limited to, the Formal Complaint, interview summaries or transcripts, and the evidence file and investigative report, other than for the purpose of consulting with an advisor; incidental to seeking support and advice from family, clergy, health professionals, and others playing a similar role; or as part of a civil, criminal, or administrative legal proceeding.

As appropriate, in a given case, a College official, such as the Title IX Coordinator, may issue an order restricting the parties from disclosing specific information. Additionally, sharing private information in a manner that harms another individual may constitute retaliation prohibited under this Policy.

The College will provide other participants, such as witnesses, investigators, and hearing and appeal panel members, with instructions about respecting and safeguarding private information. Such persons are obliged to comply with the College's rules regarding privacy.

Students and employees who wish to obtain confidential assistance without making a report to the school may do so by contacting the Confidential Resources listed in Appendix D. These resources will not share any personally identifiable information with other College employees without express permission unless doing so is necessary to address a serious and ongoing threat to the campus community.

When the College receives a report or Formal Complaint of Prohibited Conduct, but the Complainant requests that their identity remain confidential or that the College not take action to address the conduct reported, the College must balance this request against its responsibility to provide a safe and non-discriminatory environment for all members of the campus community. The College will take all reasonable steps to investigate and respond to the report consistent with the Complainant's request, but its ability to do so may be limited. If the College determines that it cannot maintain Complainant's request for confidentiality, the College will inform the Complainant as soon as practicable and will take immediate and necessary action to protect and assist the Complainant. The Complainant will not be required to participate in any proceedings initiated by the College. However, if Complainant declines to participate in an investigation or adjudication under this Policy and its Procedures, the College's ability to meaningfully respond to a report of Prohibited Conduct may be limited.

## V. Title IX Coordinator

Washington College has designated the Title IX Coordinator, with the assistance of designated staff, to coordinate the College's compliance with Title IX and related provisions of the Clery Act (as amended by VAWA) and Maryland State Law. The Title IX Coordinator oversees compliance with all aspects of this Policy, including oversight of the College's response to all reports of Prohibited Conduct.

When used in this Policy, the term Title IX Coordinator may include an appropriate designee. The Title IX Coordinator's contact information is:

Gregory K. Krikorian  
300 Washington Ave., Chestertown, MD 21620  
410-778-7752 or 717-344-1371  
**[gkrikorian2@washcoll.edu](mailto:gkrikorian2@washcoll.edu) or [wctix@washcoll.edu](mailto:wctix@washcoll.edu)**

If you have any questions about this Policy, you may contact the College's Title IX Coordinator. The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and related complaint resolution procedures. The Title IX Coordinator may delegate responsibilities under this policy to designated College staff or external professionals, who will have appropriate training or experience. Individuals tasked with aspects of implementation of this Policy and its Procedures are vetted and trained to ensure that in overseeing the institutional response to reports of Prohibited Conduct or the provision of supportive measures they do not act with bias for or against any party in a specific case, or for or against Complainants or Respondents, generally.

## VI. Prohibited Conduct

The conduct prohibited by this Policy ("Prohibited Conduct") is set out below. The College will respond to all reports of Prohibited Conduct pursuant to the applicable Procedures set out in this Policy.

Conduct that does not meet the definitions below or that is not otherwise prohibited by this Policy may violate other College policies or may be considered inappropriate or unacceptable within the College community. In appropriate cases, the Title IX Coordinator may refer such conduct elsewhere within the College for resolution.

### 1. Title IX Sexual Harassment

Title IX Sexual Harassment is conduct on the basis of sex, occurring within the United States, that constitutes one or more of the following:

- a. **Quid Pro Quo Sexual Harassment:** an employee of Washington College, conditions the provision of an aid, benefit, or service of the College, on an individual's participation in unwelcome sexual conduct; or
- b. **Hostile Environment Sexual Harassment:** unwelcome conduct, determined by a reasonable person, to be so severe, and pervasive, and, objectively offensive, that it effectively denies a person equal access to the College's education program or activity.<sup>1</sup>
- c. **Sexual Assault:** Any sexual act directed against another individual, without the consent of that individual, including instances in which the individual is incapable of giving consent
  - i. **Non-Consensual Sexual Penetration (Rape, Sodomy)**
    - a. Penetration, no matter how slight, of the vagina or anus of an individual with any body part or object, or oral penetration by a sex organ of another individual, without the consent of the individual or against the individual's will, or
    - b. not forcibly or against the individual's will in instances in which the individual is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - ii. **Non-Consensual Sexual Contact (Fondling)**
    - a. The touching of the private body parts of another individual (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, without the consent of the individual or against the individual's will, or
    - b. not forcibly or against the individual's will in instances in which the individual is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - iii. **Incest:** Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Maryland law.
  - iv. **Statutory Rape:** Non-forcible sexual intercourse, with a person who is under the statutory age of consent. The age of consent in Maryland is 16 years old.
- d. **Dating Violence:** Violence, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with an individual. 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, 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.

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<sup>1</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

- e. **Domestic Violence:** Violence, committed by a current or former spouse or intimate partner of an individual, by a person with whom the individual shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the individual as a spouse or intimate partner, or by a person similarly situated to a spouse of the individual under the domestic or family violence laws of Maryland, or by any other person against an adult or youth individual who is protected from that person's acts under the domestic or family violence laws of Maryland.

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.

- f. **Stalking:** Engaging in a course of conduct, directed at a specific person, that would cause a reasonable person to fear for that person's safety, or the safety of others; or 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.

#### **Additional Requirements**

Conduct must also meet the following additional requirements to fall within the definition of Title IX Sexual Harassment:

- It must occur within the United States; and
- It must occur within the scope of the College's educational program or activities;
- It must occur on or after August 14, 2020

Prohibited Conduct occurs within the scope of Washington College's education programs or activities when:

- It occurs on campus;
- It occurs on a property or in any facility owned and controlled by the College;
- It occurs as part of the College's operations;
- The College exercised substantial control over the Respondent;
- It occurs in a building owned or controlled by a student organization that is officially recognized by the College.

As described in Section X(4)(b) of this Policy, if conduct alleged in a Formal Complaint does not meet the definition of Title IX Sexual Harassment, the College must dismiss the Formal Complaint (or the allegations of Title IX Sexual Harassment in the Formal Complaint) for purposes of compliance with Title IX. If the conduct would still, as alleged, constitute Non-Title IX Prohibited Conduct under this Policy, the College may continue to address the allegations pursuant to the Procedures in this Policy set forth in Appendix B or C.

## 2. Non-Title IX Prohibited Conduct

In addition to the conduct set forth above as Title IX Sexual Harassment, the following conduct is also prohibited under this Policy:

### a. Non-Title IX Sexual Harassment

Non-Title IX Sexual Harassment includes conduct that meets the definition of Title IX Sexual Harassment but does not occur within the United States or within Washington College's educational program or activities (e.g., sexual harassment occurs on a school trip outside of the United States).

Non-Title IX Sexual Harassment also includes conduct that does not meet the definition of Title IX Sexual Harassment but otherwise constitutes an unwelcome sexual advance, a request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise when the conditions outlined in (i) or (ii) below are present; or unwelcome conduct based on sex, gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, non-verbal, graphic, physical, or otherwise when the conditions outlined in (i) or (ii) below are present;

- (i) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any College program or activity or is used as the basis of College decisions affecting the individual; or
- (ii) Such conduct creates a hostile environment. A "hostile environment" exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the College's education or employment programs or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and objective perspective. In evaluating whether a hostile environment exists, the College will consider the totality of known circumstances, including, but not limited to:
  - The frequency, nature, and severity of the conduct;
  - Whether the conduct was physically threatening;
  - The effect of the conduct on the Complainant's mental or emotional state;
  - Whether the conduct arose in the context of the discriminatory conduct;
  - Whether the conduct unreasonably interfered with the Complainant's educational or work performance or College programs or activities; and
  - Whether the conduct is protected by academic freedom or freedom of speech.

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment.

- b. **Non-Title IX Sexual Assault:** Non-Title IX Sexual Assault includes conduct that meets the definition of Title IX Sexual Assault but does not occur within the United States or within the College's educational program or activities.
- c. **Non-Title IX Dating Violence:** Non-Title IX Dating Violence includes conduct that meets the definition of Title IX Dating Violence but does not occur within the United States or within the College's educational program or activities.
- d. **Non-Title IX Domestic Violence:** Non-Title IX Domestic Violence includes conduct that meets the definition of Title IX Domestic Violence but does not occur within the United States or within the College's educational program or activities.



- e. **Non-Title IX Stalking:** Non-Title IX Stalking includes conduct that meets the definition of Title IX Stalking but does not occur within the United States or within the College's educational program or activities.
- f. **Sexual Exploitation:** Sexual Exploitation is intentionally engaging in any of the following:
- i. Observing another person when that person is nude or engaged in sexual activity without the knowledge and consent of the person observed or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
  - ii. Making, sharing, posting, streaming or otherwise distributing any image, photography, video, or audio recording depicting or otherwise recording another person when that person is nude or engaged in sexual activity without the knowledge and consent of the person depicted or recorded;
  - iii. Exposing one's genitals to another person without the consent of that person;
  - iv. Exposing another person to a sexually transmitted infection without the knowledge and consent of the person exposed; and
  - v. Causing another person to become incapacitated with the intent of making that person vulnerable to nonconsensual sexual assault or sexual exploitation
- g. **Aiding or Facilitating:** Knowingly and intentionally aiding or facilitating any act of sexual misconduct, before or after the fact, is a violation of this policy.
- h. **Retaliation:** Retaliation is adverse action taken against an individual with the purpose of interfering with an individual's rights under these procedures, including for making a good faith report of prohibited conduct, for participating in an investigation, proceeding, or hearing, or for refusing to participate in an investigation, proceeding, or hearing under these procedures. Retaliation may include intimidation, threats, coercion, discrimination, or adverse employment or educational actions. Retaliation may be found even when an underlying report made in good faith was not substantiated. Retaliation may be committed by the Respondent, the Complainant, or any other individual or group of individuals. Retaliation does not include good faith actions pursued in response to a report of prohibited conduct.
- i. **False or Bad Faith Allegations:** An individual found to have knowingly made a false complaint or report, or to have knowingly given false information during a process under this Policy, may be subject to disciplinary action, up to and including termination of employment or dismissal from the College's academic programs.

### 3. Affirmative Consent, Coercion, Force, and Incapacitation

**Affirmative Consent:** Sexual contact must be consensual at all times, and sexual contact is considered consensual only after affirmative consent has been given. Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. A complaint is NOT considered to have been made in bad faith simply because it is not corroborated or because a finding of responsibility cannot be reached under policy.

The following are principles that apply to the above definition of affirmative consent:

- Consent to any sexual act or prior consensual sexual activity does not necessarily constitute consent to any other sexual act.

- Consent is required regardless of whether the person initiating the act is under the influence of drugs or alcohol.
- Consent may be withdrawn at any time.
- When affirmative consent is withdrawn or can no longer be given, sexual activity must stop.
- A person is incapable of affirmative consent when they are:
  - Less than seventeen years of age;
  - Mentally disabled (a person is mentally disabled when their normal cognitive, emotional, or behavioral functioning renders them incapable of appraising their conduct); or incapacitated.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats and intimidation (implied threats) that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”). Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is intimidation or conduct that would compel an individual to do something against their will by:

- a. expressed or implied threats of physical, emotional, property, or reputational harm, or
- b. pressure that would cause a reasonable person to fear such harm.

Coercion is more than an effort to persuade or attract another person to engage in sexual activity. In assessing whether coercion was used, the frequency, duration, and intensity of the pressure applied will be taken into consideration.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or 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.

- a. Incapacitation negates consent. An individual cannot give consent when mentally or physically incapacitated, when the incapacity is known or based on the circumstances should reasonably have been known to be incapacitated.
- b. 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).
- c. 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.
- d. 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.

## VII. Campus and Community Resources

### 1. Overview of Resources and Disclosures

Washington College is committed to treating all individuals with dignity, care, and respect. Both Complainants and Respondents have equal access to support and counseling services through the College. All parties are encouraged to utilize on-campus or off-campus resources for assistance. For a comprehensive list of resources, see Appendix D of this policy.



Any individual who has been the victim of a crime is encouraged to get to a safe place and to call 911 or to contact local law enforcement, immediately.

Washington College recognizes that not every individual will choose to report conduct prohibited by this Policy to the College or to law enforcement. Accordingly, Confidential Resources are available to all students and employees. Confidential Resources can provide critical support and information and can assist individuals in evaluating whether to make a report to the College or to law enforcement. Confidential Resources are listed in Appendix D.

As set forth in Appendix D, the staff at Health and Counseling Services are Washington College's designated Confidential Resources. Confidential Resources are certain employees that are required by law to protect confidentiality when acting in the course of their professional duties. Under most circumstances, Confidential Resources will not share information with other individuals without the express consent of the reporting party. An exception may be made if there is an imminent risk of danger to the reporting party or another individual or where required by law, such as in the case of reporting abuse of a minor or vulnerable adult.

All other employees of the College are mandated reporters and have an obligation to share any reports of conduct prohibited by this Policy with the Title IX Coordinator.

## 2. Medical Care After a Sexual Assault

Any person who experiences sexual assault or violence is encouraged to immediately seek medical assistance. Seeking medical care does not result in a report to law enforcement or to the College. In the aftermath of sexual assault or violence, medical providers can facilitate or provide the following:

- Treatment of any injury or physical trauma
- HIV and STI testing
- Pregnancy testing
- Advice on health care concerns related to the incident
- Collection and preservation of evidence as a part of a sexual assault forensic exam for potential use in criminal prosecution.
- Transportation will be provided to an area hospital equipped with SAFE kits.

On-Campus Resources include:  
Health Services (410-778-7261)

Off-Campus Resources include:  
University of Maryland Shore Medical Center at Chestertown (410-778-3300)  
University of Maryland Shore Medical Center at Easton (410-822-1000)

For more information about sexual assault forensic examinations, visit RAINN's webpage, call RAINN's 24-hour National Sexual Assault Hotline: (800) 656-HOPE, or chat online at [online.rainn.org](https://www.rainn.org).

# VIII. Making a Report Under This Policy

## 1. Reporting Guidelines

All members of the Washington College community are encouraged to report information about any form of conduct potentially prohibited by this Policy involving a student or an employee. The College will respond to all reports of Prohibited Conduct, including contacting the Complainant to discuss the availability of supportive measures, resources for support, and options for resolution.

At the time a report of Prohibited Conduct is made, a Complainant does not have to decide whether to pursue resolution of the report through any particular resolution process. Choosing to make a report and deciding how to

proceed can be a process that unfolds over time. Although the College may need to take action as a result of a particular report, the College will endeavor to respect a Complainant's wishes in making the decision that is best for them and will provide support to assist each individual in making that decision. Because the conduct prohibited by this Policy often involves behaviors or interactions that are not witnessed by third parties, reports cannot always be substantiated by additional direct evidence. Lack of corroborating direct evidence should not discourage a person from reporting an experience of Prohibited Conduct.

Individuals may make a report of Prohibited Conduct by filling out a CARE Report by emailing the Title IX Coordinator ([wctix@washcoll.edu](mailto:wctix@washcoll.edu)) or by contacting the following College employees:

### Assistant Title IX Coordinators

Kate Laking  
Human Resource Director  
Cromwell Hall  
[klaking2@washcoll.edu](mailto:klaking2@washcoll.edu)  
410-778-7799

Ryan Colman  
Director of Public Safety  
Cullen Hall (Wicomico wing, lower level)  
[rcolman2@washcoll.edu](mailto:rcolman2@washcoll.edu)  
410-778-7810

Kari Hughes  
Head Women's Rowing Coach  
Johnson Fitness Center  
[khughes5@washcoll.edu](mailto:khughes5@washcoll.edu)  
410-778-7226

Julie Wills  
Associate Professor of Art  
Daly Hall  
[jwills@washcoll.edu](mailto:jwills@washcoll.edu)  
410-810-5058

#### a. Mandated Reporters

All College employees are Mandated Reporters, except student employees. Resident Assistants are the only student employees who are Mandated Reporters. When Mandated Reporters become aware of an alleged incident of sexual harassment (which includes sexual assault, dating violence, domestic violence, and stalking) or other conduct prohibited by this Policy, that involves a student as either the Complainant or Respondent, they are always obligated to report the information they have to the Title IX Coordinator. Mandated Reporters should be prepared to report the name, date, time, location, and description of the incident (if known). They are otherwise required to maintain an individual's privacy to the greatest extent possible.

When the Title IX Coordinator receives a report of Prohibited Conduct, they will contact the Complainant, if known, or another individual reporting the Prohibited Conduct to offer resources and supportive measures. The individual will also be advised of the option to pursue a Formal Complaint, if such an option is available, and any other available reporting options and resources.

A Mandated Reporter who receives a report, should not, under any circumstances, attempt to resolve the report without first reporting it to the Title IX Coordinator. Such failure to report may subject the individual to disciplinary sanctions.

#### b. Time Frame for Reporting

There is no time limitation on reporting or filing a Formal Complaint of Prohibited Conduct to the Title IX Coordinator. However, if the Respondent is no longer subject to the College's jurisdiction or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible. Acting on reports and Formal Complaints significantly impacted by the passage of time (including, but not limited to, acts that have been impacted by 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 or remedies, or engage in informal or formal action, as appropriate.

When a Formal Complaint is filed after a significant delay the College will apply the Policy in place at the time of the alleged Prohibited Conduct and the Procedures in place at the time the report was made.

**c. Anonymous Reporting**

Individuals may submit reports of Prohibited Conduct anonymously. An individual may make a report without disclosing their name, identifying the Respondent, or requesting action. Depending on the level of information included about the conduct or the individuals involved, anonymous reporting may reduce the College's ability to respond or take appropriate action. Moreover, the College will generally not be able to take disciplinary action against an individual based solely on an anonymous report.

**d. Public Awareness and Advocacy Events**

Public awareness or advocacy events at which community members disclose incidents of Prohibited Conduct do not initiate the College's Title IX obligations, including its obligation to investigate reports of Prohibited Conduct. Such events may, however, inform the need for campus-wide educational and prevention efforts, and the College may implement broad community initiatives in response to such events where appropriate.

**2. Response to Reports of Prohibited Conduct**

Upon receipt of a report of Prohibited Conduct, the Title IX Coordinator will provide Complainant with an explanation of their rights under this Policy, the process for filing a Formal Complaint, and an overview of their options for resolution of the Formal Complaint and the Procedures associated with each resolution process. The Complainant will also be informed of the range of possible outcomes of the resolution process, including potential remedial actions and possible disciplinary actions that may be taken against the Respondent upon a finding of a violation of this Policy. The Complainant will also be advised of their right to request that the College refrain from initiating a resolution process and their right to file a report with Washington College Public Safety and state and local law enforcement.

The Complainant will be informed of the availability of supportive measures regardless of whether Complainant files a Formal Complaint. The Title IX Coordinator will consider the Complainant's requests for supportive measures in accordance with Section, IX of this Policy.

**3. Advisors**

The Complainant and Respondent have the right to have an advisor of their choosing present with them at all stages under this Policy and its Procedures. The advisor may be any person, including an attorney. The parties may be accompanied by their respective advisor at any meeting or proceeding related to the investigation or resolution of a report under this Policy. While the advisor may provide support and advice to the parties at any meeting or proceeding, the College may establish restrictions regarding the extent to which the advisor may participate in the proceedings. Advisors may not speak on behalf of the parties or otherwise participate in, or in any manner delay, disrupt, or interfere with meetings or proceedings, with the exception that a party's advisor participating in a hearing under [Appendix A](#) will ask questions of the other party and witnesses.

An advisor should plan to make themselves reasonably available, and the College will not unduly delay the scheduling of meetings or proceedings based on the advisor's unavailability.

If an advisor fails to comply with the Procedures set forth herein or established rules of decorum, the College reserves the right to exclude the advisor from further participation in the process. The Title IX Coordinator is responsible for interpreting and applying this provision.

In sexual misconduct cases involving students only, the Complainant and the Respondent may have no more than two people (i.e., a personal supporter, an attorney, a trained advocate, or an advocate supervised by an attorney) at any hearing, meeting, or interview during the investigation and hearing process. Support persons

should not also be witnesses to the matter. The support person, advisor, and attorney are permitted to be present and to provide private advice and counsel to the student only, but is not permitted to participate in hearings, meetings, or interviews directly (for instance, the advisor is not permitted to address the investigators or hearing panelists). Disruptive supporters, attorneys, or advisors may be removed and prohibited from further participation in the investigation and hearing process. Student Complainants and Respondents may access attorneys paid for by the Maryland Higher Education Commission (MHEC) or who agree to participate on a pro bono (without charge) basis. Information regarding accessing counsel through MHEC can be found on [the MHEC website](#). Students may knowingly and voluntarily choose not to have counsel.

#### 4. **Amnesty for Drug and Alcohol Use**

The health and safety of every student and employee at Washington College is of utmost importance. The College recognizes that students or employees who have been drinking or using drugs (whether such use is voluntary or involuntary) in violation of other College policies may be hesitant to report incidents due to fear of potential consequences for their own conduct. The College strongly encourages individuals to report such Prohibited Conduct. A Complainant, bystander, or other individual who in good faith reports Prohibited Conduct under this Policy to a College official or law enforcement shall be covered under the College's Medical Amnesty Policy as outlined in the Student Handbook.

#### 5. **Coordination with Law Enforcement**

Washington College strongly encourages Complainants to pursue criminal action for incidents of sexual harassment, sexual violence, and dating and domestic violence, and stalking that may also be crimes under Maryland law. The College will assist a Complainant in making a criminal report and will cooperate with law enforcement agencies if a Complainant decides to pursue criminal action to the extent permitted by law.

Neither law enforcement's determination whether or not to prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether a violation of this Policy has occurred.

Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings. The College may not delay conducting its own investigation unless specifically requested by the law enforcement to do so.

In the event of such a specific request, the College will defer its investigation only during the time that law enforcement is gathering evidence, which should not exceed ten days absent extenuating circumstances. The College will nevertheless communicate with the Complainant and Respondent (if appropriate) regarding Title IX rights, procedural options, and the implementation of supportive measures to assure safety and well-being. The College will promptly resume fact-gathering as soon as it is informed that law enforcement has completed its initial investigation.

## **IX. Supportive Measures**

Washington College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, 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, or deter harassment, discrimination, or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice of a report or a Formal 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 and Respondent to ensure that their wishes are taken into account with respect to the supportive measures that are offered. The College will maintain the privacy of the supportive measures, provided that privacy does not impair its ability to provide the

supportive measures. The College will act to ensure as minimal an academic impact on the parties as possible. The College will implement measures in a way that does not unreasonably burden the other party.

Supportive measures may include, but are not limited to:

- Referral to counseling, medical, or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties<sup>2</sup>
- Academic support, extensions of deadlines, or other course/program-related adjustments
- 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

### **Review of Supportive Measures**

Upon request, a Complainant or Respondent will be afforded a reasonable and prompt review of any supportive measure that directly affects them and will be permitted to submit evidence in support of any changes requested.

### **Emergency Removal**

If after undertaking an individualized safety and risk analysis, the Title IX Coordinator, in consultation with the Vice President for Student Affairs or designee determines that the Respondent poses an immediate threat to the physical health or safety of any student or other individual in the College community, the College may remove the Respondent on an emergency basis. The length and nature of the removal will depend on the facts of the case. The College will notify the Respondent of the emergency removal. Both the Complainant and the Respondent will have an opportunity to challenge the decision and its terms, including by submitting evidence, immediately following the removal to the Vice President for Student Affairs or designee.

### **Administrative Leave**

The College may place a non-student employee Respondent on administrative leave, consistent with the Employee Information Guide, during the pendency of a Formal Resolution process conducted pursuant to this Policy and its procedures.

## **X. Resolution Process**

### **1. Options for Report Resolution**

Reports of Prohibited Conduct are generally resolved either through a support-based resolution of a report of Prohibited Conduct, an informal resolution of a Formal Complaint, or a Formal Resolution of a Formal Complaint.

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<sup>2</sup> When a no contact order has been issued as a supportive measure or sanction in response to a complaint of a pattern or repeated actions on the part of the Respondent (such as, for example, a complaint of stalking or repeated sexual harassment), violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

## 2. Initial Inquiry

When the Title IX Coordinator receives any report of Prohibited Conduct, the Title IX Coordinator will initiate an inquiry into the allegations. Information learned during the initial inquiry will inform the Title IX Coordinator's determination regarding the provision of supportive measures to the parties and appropriate resolution processes.

## 3. Support-based Resolution

A Support-based Resolution of a report of Prohibited Conduct occurs when the report does not result in the filing of a Formal Complaint. Support-based resolutions will include the offering and provision of supportive measures intended to restore equal access to the College's educational programs and activities and to preserve a safe and non-discriminatory environment for living, working, and learning.

## 4. Formal Complaints

A Formal Complaint is a document signed by the Complainant or the Title IX Coordinator alleging a violation of this Policy against a Respondent and requesting that the College initiate an informal or Formal Resolution of the Formal Complaint pursuant to this Policy and its Procedures. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. For matters involving Title IX Prohibited Conduct, the Complainant must be participating or attempting to participate in the College's educational program or activities at the time of the filing of the Formal Complaint.

If the Complainant chooses not to file a Formal Complaint, the Title IX Coordinator has discretion to file a Formal Complaint. Where the Title IX Coordinator determines that the College cannot honor the Complainant's request that no Formal Complaint be pursued under this Policy, the Title IX Coordinator will promptly initiate the resolution process by making a signed, written Formal Complaint on behalf of the College. In determining whether to file a Formal Complaint, the Title IX Coordinator will consider the following:

- Whether the Respondent has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct by the Respondent from previously noted behavior;
- The increased risk that the Respondent will commit additional acts of violence;
- Whether the Respondent used a weapon or force;
- Whether the Complainant is a minor;
- Whether the College possesses other means to obtain evidence such as security footage; and
- Whether available information reveals a pattern of perpetration at a given location or by a particular group.

If the Title IX Coordinator decides to file a Formal Complaint, The Title IX Coordinator will notify the Complainant of the College's intention to proceed with a Formal Complaint and will take immediate action as necessary to protect and assist the Complainant. The Title IX Coordinator will make reasonable efforts to protect the privacy of the Complainant. However, typically, the Complainant's identity would have to be disclosed as part of the College's investigation. The Complainant is not required to participate in any proceedings that follow. However, if the Complainant declines to participate in an investigation or the adjudicative process under this Policy and its Procedures, the College's ability to investigate meaningfully and respond to a report of prohibited conduct may be limited.

### a. Consolidation of Formal Complaints

The Title IX Coordinator has the discretion to consolidate multiple reports into a single investigation if evidence relevant to one incident might be relevant to the others. Consolidation might involve multiple Complainants and a single Respondent, multiple Respondents, or conduct that is temporally or logically connected. In the event that the allegations under this Policy involve allegations of a violation of a separate policy, the College will have the right, within its sole



discretion, to consolidate those other allegations within one investigation or hearing under this Policy and its accompanying Procedures.

**b. Dismissal of Formal Complaints**

After the filing of the Formal Complaint, or during the initial inquiry, investigation, or resolution process, it may become apparent that conduct alleged in a Formal Complaint does not meet the definition of Title IX Sexual Harassment as defined in section VI(1) of this Policy. In that case, in accordance with Title IX, the Title IX Coordinator must dismiss the Formal Complaint (or the allegations of Title IX Sexual Harassment, therein). If the conduct would still, as alleged, constitute Non-Title IX Prohibited Conduct as defined in section VI(2) of this Policy, the College will continue to address the allegations pursuant to this Policy and the resolution procedures set forth in Appendices B or C. If the conduct, as alleged, does not constitute a violation of this Policy, the Formal Complaint will be dismissed in its entirety. If the conduct, as alleged, violates another College policy, the Title IX Coordinator must transfer the matter, and all information related to it, to the appropriate College office for assessment and potential further action.

The Title IX Coordinator may dismiss a Formal Complaint and close a case where:

- there is no jurisdiction under these procedures;
- the facts set forth in the Formal Complaint do not constitute prohibited conduct under these procedures;
- the Complainant fails or refuses to cooperate with the investigation such that the investigator is unable to investigate despite reasonable measures, including where the Complainant cannot be located, the Complainant fails or refuses to be available for interviews or meetings, or the Complainant fails to provide necessary information;
- the Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations therein, prior to resolution;
- the Respondent is no longer enrolled in, or employed by, the College; or
- 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 Title IX Coordinator will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. The parties may appeal the dismissal of the Formal Complaint on any of the bases and pursuant to the procedures set forth in Section XII Appeals, below.

**5. Notice of Allegations**

At the issuance of a Formal Complaint, the Title IX Coordinator will notify the Complainant and the Respondent, in writing, of the filing of the Formal Complaint and commencement of resolution process pursuant to this Policy and its Procedures and will provide both parties with a copy of the Formal Complaint. Such notice will:

- identify the Complainant and the Respondent;
- specify the alleged prohibited conduct and its date, time, and location, to the extent known;
- specify the basis for jurisdiction over the Formal Complaint;
- specify the factual allegations pertaining to the prohibited conduct;
- specify any sanctions that may be imposed, including the College's transcript notation policy;
- specify which procedures will be used to resolve the Formal Complaint
- identify the investigator(s) or the facilitator of informal resolution;
- include information about the parties' respective rights and obligations under this Policy and the applicable procedures;

- inform the parties of their right to have an advisor of choice at all stages of the resolution process, who may accompany the respective parties to meetings and proceedings;
- inform the parties of the range of available resources, including mental health and academic support resources;
- explain the prohibition against retaliation; and
- instruct the parties to preserve any potentially relevant evidence, whatever its form.

If, at any point prior to the resolution of the Formal Complaint, the Title IX Coordinator determines that there are additional allegations of Prohibited Conduct not included in the original notice that should be investigated, the Title IX Coordinator must provide the parties with an amended notice of additional allegations.

## 6. Informal Resolution

At any time after a Formal Complaint has been filed and before a hearing commences, the parties may seek to resolve a report of prohibited conduct through Informal Resolution, an administrative process. Participation in Informal Resolution is entirely voluntary; the Title IX Coordinator will neither pressure nor compel either party to participate in the process or to agree to any specific terms. In every case, the Title IX Coordinator has discretion to determine whether the matter is appropriate for Informal Resolution and to determine the appropriate terms.

Before the Title IX Coordinator approves the Informal Resolution process or the terms of any Informal Resolution, the Title IX Coordinator will determine that they have sufficient information about the matter to make these decisions. The parties are strongly encouraged, although not required, to consult with their advisors during the Informal Resolution process.

If the process is terminated for any reason, the matter will be re-evaluated for resolution pursuant to the Formal Complaint resolution process under this Policy and its Procedures. For this reason, the investigator will not participate in Informal Resolution. The Title IX Coordinator will oversee the Informal Resolution process and have access to all College records in the matter, including any records or reports prepared during an investigation.

The Title IX Coordinator will consult separately with both parties and recommend to the parties the terms of a potential Informal Resolution agreement. Such terms may include, but are not limited to, any sanctions or remedies that could be imposed as a result of a finding following a hearing under these proceedings.

Both parties must agree to the terms before an Informal Resolution agreement becomes effective. At any time before a written agreement is effective, the Complainant or the Respondent may withdraw from the Informal Resolution process, and the Title IX Coordinator may also, at their discretion, terminate the process.

If both parties are satisfied with the Title IX Coordinator's recommendation, the matter will be resolved with a written agreement. The Title IX Coordinator will provide each party, separately, with a copy of the proposed agreement for the party to review, sign, and return. If both parties return the signed written agreement to the Title IX Coordinator the terms of the agreement will become effective, and the Title IX Coordinator will promptly notify both parties in writing that the agreement is final. Once the agreement is effective, the parties may not appeal the agreement and the Complainant may not seek to refile the Formal Complaint absent new allegations of misconduct. The parties are expected to honor and comply with the terms of the Informal Resolution. Noncompliance may be subject to proceedings under the other College policies.

If the process is terminated and the matter is resolved pursuant to the Formal Resolution process, neither the Title IX Coordinator nor the parties will disclose to the Investigator, Decision-maker, or Appellate

reviewers either the fact that the parties had participated in the Informal Resolution process or any information learned during the process.

While the parties are exploring Informal Resolution, any pending investigation will pause, and the time spent pursuing resolution in this way will not count toward the investigation time limit.

Informal Resolution typically takes two forms: (1) Restorative Agreements, or (2) Negotiated Agreements. Other forms of informal resolution may be available in the discretion of the Title IX Coordinator, in agreement with both parties. Informal resolution is NOT available to resolve complaints alleging sexual assault or sexual coercion.

**a. Restorative Agreement**

The purpose of a Restorative Agreement is for the parties to identify and agree on a set of remedies. Upon successful completion of those remedies, the Formal Complaint will be resolved and may not be refiled. Such remedies may include:

- Impact Letter;
- Apology Letter;
- Directed Study;
- Reflection Paper; or
- Other forms of restorative actions

**b. Negotiated Agreement**

As a necessary precondition of a Negotiated Resolution, the Respondent must accept responsibility for all or part of the alleged prohibited conduct. The parties will then have an opportunity to negotiate with the Title IX Coordinator what they believe the appropriate sanction should be. In support of their position, parties are encouraged to submit impact/mitigation information they believe the Title IX Coordinator should consider in evaluating any sanction.

The Title IX Coordinator has the discretion to propose other terms for the resolution that may be appropriate to address the prohibited conduct for which the Respondent has accepted responsibility.

If the Respondent agrees to a Negotiated Agreement under Informal Resolution that provides for a suspension, withdrawal, or dismissal (i.e., expulsion) from the College, there will be a transcript notation consistent with the College's policy.

**7. Formal Resolutions**

The Formal Resolution process is guided by provisions of this section of this Policy and by the Procedures accompanying this Policy. The applicable procedure is determined by the type of prohibited conduct alleged (Title IX Sexual Harassment or Non-Title IX Prohibited Conduct) and the identity of the Respondent. Upon receipt of a report or a Formal Complaint, the Title IX Coordinator will determine which procedure applies.

The Formal Resolution process is overseen by the Title IX Coordinator and will be conducted in a prompt and equitable manner, pursuant to the time frames set forth in Section XIII. Throughout the Formal Resolution process, all responsible personnel will maintain a commitment to impartiality.

**a. Evidentiary Standard and Burden of Proof**

The Respondent is presumed not responsible. A Respondent will be found responsible for violating this Policy only when such a finding is supported by the Preponderance of the Evidence.

Washington College, not the parties, has the burden of proof and the burden of gathering evidence sufficient to reach a finding of responsibility.

**b. Investigation and Adjudication Procedures**

Appendix A outlines the procedures for the resolution of reports of Title IX Sexual Harassment in violation of this Policy.

Appendix B outlines the procedures for the resolution of reports of Non-Title IX Sexual Misconduct committed by students in violation of this Policy.

Appendix C outlines the procedures for the resolution of reports of Non-Title IX Sexual Misconduct committed by employees in violation of this Policy.

**XI. Sanctions**

Remedial actions include (but are not limited to):

- College warning (except in cases of sexual assault/violence)
- Restrictions limiting access or participation in activities
- Suspension/expulsion
- Probation
- Termination of employment
- Protection from retaliation
- Counseling for the Reporting Party
- Other steps to address the impact of harassment or discrimination on the Reporting Party, any witnesses, and the College community

**XII. Appeals**

Both the Complainant and the Respondent may appeal the Title IX Coordinator's dismissal of a Formal Complaint or any allegations therein or, the determination of responsibility following a hearing or, on the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- 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;
- 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 individual Complainant or Respondent that affected the outcome of the matter; or
- Sanction or remedies imposed are not commensurate with finding made.

A party may commence an appeal by submitting a written statement to the Title IX Coordinator within ten (10) business days of issuance of the final determination of responsibility or the dismissal of the Formal Complaint. The appeal statement must set forth:

- the determination(s) being appealed,
- the specific ground(s) for the appeal, and
- the facts supporting the grounds.

The appeal statement will be limited to 3,500 words. Failure to submit an appeal within the ten (10) business days or any approved extension constitutes waiver of the right to appeal.

A copy of the appeal statement will be provided to the other party, who, within ten (10) business days may submit a written response to the Title IX Coordinator. The response should address both the specific ground(s) for

appeal set forth in the appealing party's statement and the specific facts asserted by the appealing party. The response will be limited to 3,500 words.

The Title IX Coordinator will submit the appeal and response, if any to the appellate panel, which will be comprised of three individuals appointed by the Title IX Coordinator. The panel members/reviewer will not be the Title IX Coordinator, the investigator, or a Decision-maker.

The Appeal Panel will establish a reasonable schedule for issuing a written decision, typically no later than thirty (30) business days after receipt of the non-appealing party's submission or the time for submission has expired.

The Appeal Panel may affirm the decision or sustain any of the above-specified grounds for appeal, in which case the Appeal Panel may:

- reverse a decision or finding;
- change a sanction or remedy;
- remand a decision to the Title IX Coordinator;
- remand a case to the original Decision Maker(s) for clarification or reconsideration consistent with the Appeal Panel's decision, if doing so would assist with a timely, practicable, and efficient resolution of the case;
- remand a case for a new hearing to either the original Decision Maker(s) or a newly composed Decision Maker(s); or
- remand a case for a new or additional investigation, followed by an adjudication consistent with these procedures, to either the original investigator or to a new investigator.

If the Appeal Panel reverses a finding of not responsible, the Appeal Panel must also determine the sanctions and remedies to be included in their written decision. If the Impact/Mitigation Statements have not previously been distributed, they would be distributed to both parties only upon a finding of responsibility, and, in that instance, when the Title IX Coordinator distributes the Appeal Panel's written decision to the parties.

If the Appeal Panel calls for the admission of new evidence, if possible, it will remand the case to the Decision-maker from which it originated for a new hearing or review. Upon remand from the Appeal Panel, as necessary and possible, a Decision-maker may remand a case to the investigator from which it originated for further investigation.

The decision of the Appeal Panel will be final and binding on all parties.

### **XIII. Time Frames**

Washington College seeks to resolve all reports of Prohibited Conduct pursuant to the following time frames

- Informal Resolution: The informal resolution process is typically completed within 30–60 calendar days.
- Formal Resolution: The formal resolution process is typically completed within 90–120 calendar days.

The Title IX Coordinator may extend the time frames for good cause. Good cause for extension may include the unavailability of the parties or their advisors, concurrent law enforcement investigation, the complexity of the allegations, or other extenuating circumstances. Any extension, and the reason(s) therefore, will be shared with the parties, in writing.

### **XIV. Training**

The Title IX Coordinator, Investigators, Decision-makers, Appellate Reviewers, and Facilitators of Informal Resolutions, shall, at a minimum, receive all training and education required pursuant to Title IX, the Violence Against Women Act, and Maryland State Law.

## **XV. Record Keeping**

Washington College will maintain the following records:

- Records of reports of Prohibited Conduct under this Policy and any actions taken in response to the reports, including the issuance of supportive measures and educational efforts;
- Records related to each Formal Resolution process;
- Records related to each Informal Resolution process;
- Materials used to train and educate the Title IX Coordinator, Investigators, Decision-makers, Appellate Reviewers, and Facilitators of Informal Resolutions.

This information will be used by the Title IX Coordinator to monitor patterns and areas of concern. In general records will be kept for seven (7) years after the date the reported incident is resolved. Certain records may be retained longer in the College's sole discretion, including for active employees.



## Appendix A: Procedures for the Formal Resolution of Formal Complaints of Title IX Sexual Harassment

### ***I. Scope of These Procedures***

The procedures set forth below will guide the investigation and adjudication of Formal Complaints of Title IX Sexual Harassment, as defined in Section VI(1).

### ***II. Initiation of the Investigation***

An investigation under these procedures will be initiated at the Title IX Coordinator's direction after the filing of a Formal Complaint and the issuance of a Notice of Allegations to the parties.

### ***III. The Investigation***

#### **1. Overview of the Investigation**

The investigation is a neutral fact-gathering process. During the investigation, the parties will have an equal opportunity to be heard, to submit evidence, to identify witnesses who have relevant information, including fact and expert witnesses, and to submit questions that they believe should be directed by the investigator to each other or to any witness. The investigators will also seek to obtain relevant evidence identified during the investigation, including relevant evidence that has not been offered by either party. The College may continue an investigation without the participation of any party.

#### **2. The Investigator**

Investigations will be conducted by one or more appropriately trained individuals appointed by the Title IX Coordinator. The Investigator(s) will be impartial and will conduct a prompt, thorough, and fair investigation. The Investigator(s) may be a College employee or an external party.

#### **3. Evidence Collection**

##### **a. Testimonial Evidence Collection: Investigative Interview**

Testimony is evidence. Thus, throughout the investigation, the Investigator(s) will endeavor to interview the parties and other individuals (witnesses) who have information that is relevant or directly related to the allegations in the Formal Complaint, including fact and expert witnesses. The Investigator(s) will provide to everyone whose participation in an investigative interview is invited or expected written notice of the date, time, and location of the interview, and the parties will be given a sufficient time to prepare to participate.

If a party declines to participate in investigative interviews deemed necessary by the investigator, the party will forfeit the opportunity at the hearing to provide testimony at the hearing. If a witness declines to participate in an investigative interview, they will not be permitted to provide testimony at the hearing.

Investigative interviews may be conducted in person, or via telephone or video conference. Investigative interviews will be recorded. Following the investigative interview, the Investigator(s) will prepare a full written summary of the interview ("Interview Summary"). This summary will be shared with the interviewee and the interviewee will be provided three (3) business days to submit, in writing to the investigator, any corrections to, or comments about, or proposed changes to, the interview summary that the interviewee believes is necessary to ensure the accuracy of the interview summary. Submissions made by the interviewee will be attached to the original summary. The deadline for submitting a response may be extended for good cause, upon request to the

Investigator(s). If no response is received from the interviewee, the summary prepared will be presumed accurate.

**b. Non-Testimonial Evidence Collection**

During the investigative interviews, the Investigator(s) will gather other available evidence and information that is directly related to the allegations in the Formal Complaint, including, without limitation, electronic and other records of communications between the parties or witnesses (via voicemail, text message, audio messages, email, or social media sites), photographs and videos, medical records (subject to required consent), and records generated by public safety or law enforcement.

**c. Evidence Collection Logs**

The Investigator(s) will maintain a log of all testimonial and non-testimonial evidence obtained and the source of such evidence. The Investigator(s) will also maintain a log of all testimonial and non-testimonial evidence offered or sought, but not obtained, and the reason such evidence was not obtained. These logs will be made a part of the evidence file.

**4. Review of the Draft Investigative Report and Draft Evidence File**

**a. The Draft Evidence File**

At the conclusion of the investigation, the Investigators will compile all of the evidence that is directly related to the allegations in the Formal Complaint, including the summaries of the statements the parties and witness, evidence that is both inculpatory and exculpatory, and evidence upon which the investigator does not intend to rely. This compilation of evidence will be referred to as the "Draft Evidence File."

The Draft Evidence File will be intentionally organized to support comprehension and will be divided into at least two sections. One section will include evidence obtained that the Investigator(s) deems relevant to the allegations in the Formal Complaint. The other section(s) will include evidence that the Investigator(s) do not deem relevant, but that is otherwise directly related to the allegations in the Formal Complaint.

**b. The Draft Investigative Report**

The Investigator(s) will also prepare a "Draft Investigative Report" that fairly summarizes the relevant evidence. The Draft Investigative Report will not include any findings.

**c. Review and Opportunity to Respond**

Upon completion, the Investigator(s) will share the Draft Evidence File and Draft Investigative Report with the parties and their advisors electronically, or by hard copy. The parties will then be afforded ten (10) business days to review the Draft Evidence File and Draft Investigative Report and to submit an optional written response, which may include responses to the evidence and requests that the Investigator(s) accept, seek, or obtain additional evidence or conduct follow up inquiries of the other party(ies) or witnesses. The parties' responses may also include challenges to the Investigator's assessment of relevance. Any responses submitted by the parties will be shared with the other party and made a part of the Final Evidence File.

**d. Additional Evidence Collection**

The Investigator(s) will consider the written responses of the parties, if any, and will determine in their sole discretion, whether further investigative steps are required. If additional investigative steps are taken that result in collection of additional evidence, such additional evidence will be included in the Draft Investigative File and incorporated, as appropriate, into the Draft Investigative Report. The new evidence and any changes to the Draft Investigative Report and will be shared

with the parties and their advisors electronically, or by hard copy. The parties will be provided with a final opportunity to respond, in writing. The Investigator will determine the length of this review period. Any additional responses submitted will be shared with the other party and made a part of the Final Evidence File.

**e. Prohibition of Evidence Not Offered During the Investigation**

In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the Investigator(s) during the investigation or during this designated response and review period will not be considered in the determination of responsibility for a violation of the Policy and will not be considered during the hearing process.

**5. Final Investigative Report and Final Evidence File**

At the conclusion of the fact gathering process and the review periods, as described in this Procedure, the Investigator(s) will prepare a Final Investigative File and Investigative Report.

**a. The Final Investigative File**

The Final Investigative File will include all of the evidence that is directly related to the allegations in the Formal Complaint, including the summaries of the statements the parties and witness, evidence that is both inculpatory and exculpatory, and evidence upon which the College does not intend to rely. The Final Investigative File will also include any responses submitted by the parties during the evidence review period and a timeline of all procedural steps taken by the College from the time of the filing of the Formal Complaint to the conclusion of the investigation.

The Final Evidence File will be intentionally organized to support comprehension and will be divided into at least two sections. One section will include evidence obtained that the Investigator(s) deems relevant to the allegations in the Formal Complaint. The other section(s) will include evidence that the Investigator(s) do not deem relevant, but that is otherwise directly related to the allegations in the Formal Complaint. The final section will include the procedural timeline.

**b. The Final Investigative Report**

The Final Investigative Report will be prepared by the Investigator(s) and will fairly summarize all of the relevant evidence obtained during the investigation. Relevance Determinations are generally guided by the principles set forth below in Section V of this Procedure.

**c. Submission of the Final Investigative Report and Evidence File to the Parties**

The Final Investigative Report and Evidence File will be simultaneously provided to the parties and their advisors in electronic format or hard copy, at least ten (10) business days prior to a hearing. The parties will have ten (10) business days to submit a written response to the Final Investigative Report and Evidence File.

The Final Investigative Report and Evidence File, and any written responses submitted by the parties will be provided to the Decision Maker(s).

## ***IV. The Hearing***

**1. Overview**

Upon conclusion of the investigation, a hearing will be held to determine whether the Respondent is responsible for the alleged policy violations in the Formal Complaint. As set forth in Section X of this Policy, the Respondent is presumed not responsible. A Respondent will be found responsible for violating this Policy only when such a finding is supported by the Preponderance of the Evidence.

The hearing is a private proceeding. The only people present will be the parties, their advisors, the Decision-maker(s), witnesses (when testifying), and any staff necessary for conducting the hearing.

## 2. Hearing Participants

### a. Decision-makers

The College will designate the Decision-maker for the moderation of the hearing and determination of finding and sanction. This may take the form of a single decision-maker or a three-member panel at the Title IX Coordinator's discretion. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator. The Decision-maker(s) may not be the Title IX Coordinator, a facilitator of informal resolution, or the investigator.

Upon receipt of the notice of the Decision-Maker or three-member panel, Parties will have three (3) business days to object to the appointment of a Decision-maker, on the basis of demonstrated bias or conflict of interest.

### b. The Parties

The Parties are permitted to participate in the entirety of hearing, portions thereof, or they can decline to participate in the hearing entirely, and the Decision-maker(s) will not draw an adverse inference against a party based solely on their decision not to participate in all or some of the hearing proceedings.

In accordance with Section III(3)(a) of these procedures, if a party declined to participate in investigative interviews deemed necessary by the investigator, the party will not be permitted the opportunity to provide testimony at the hearing.

Nonetheless, if a party who has so declined to participate in investigative interviews later seeks to participate in a hearing, upon a finding that there was a compelling reason for the nonparticipation, the Hearing Chair, upon the Chair's discretion, may permit the party to participate. If the Hearing Chair permits the party to participate in the hearing, the Hearing Chair will first reschedule or adjourn the hearing for the investigator to interview the party and, as necessary, conduct any follow-up investigation and supplement and revise the evidence file and the investigative report.

### c. Advisors

The parties have the right to have an advisor of their choice present at the hearing in accordance with Section X(2) of this Policy. If a party does not have an advisor of choice, the Title IX Coordinator will appoint an advisor to that party for the sole purpose of conducting cross examination of other party and witnesses. A party's advisor of choice or an advisor appointed by the Title IX Coordinator may participate in the hearing for the sole purpose of conducting cross examination in the absence of their advisee.

As set forth in Section X(2) of this Policy, Advisors may not speak on behalf of the parties or otherwise participate in, or in any manner delay or disrupt the hearing. If an advisor fails to comply with the procedures set forth herein or the established rules of decorum, the College reserves the right to exclude the advisor from further participation in the process. The Title IX Coordinator is responsible for interpreting and applying this provision.

### d. Witnesses

The Decision-maker(s) will determine, in their sole discretion, which witnesses will be invited to provide testimony at the hearing. Witnesses who are invited to participate in the hearing will be permitted to attend the hearing only when providing testimony.

In accordance with Section III(3)(a) of these procedures, a witness who declined to participate in an investigative interview will not be permitted to provide testimony at the hearing.

However, if a witness who has so declined to participate in investigative interviews later seeks to participate in a hearing, upon a finding that there was a compelling reason for the nonparticipation, the Decision-maker(s), upon their discretion, may permit the party to participate. If the Decision-maker(s) permits the party to participate in the hearing, the Decision-maker(s) will first reschedule or adjourn the hearing for the investigator to interview the party and, as necessary, conduct any follow-up investigation and supplement and revise the evidence file and the investigative report.

**e. Hearing Facilitators**

The orderly administration of hearings will be supported by Hearing Facilitators, who are individuals either internal or external to the College and appointed by the Title IX Coordinator.

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.

**3. Notice of Hearing**

The Title IX Coordinator will notify the parties in writing of the date, time, and location/format of the hearing. The notice will include the charges at issue; a brief summary of the alleged prohibited conduct; and the applicable procedures under this Policy. All efforts will be made to provide the Notice of Hearing no later than five (5) days prior to the hearing and to schedule the hearing as soon as practicable.

Either party may request to have a hearing rescheduled. The request may be granted at the discretion of the Title IX Coordinator. Absent extenuating circumstances, requests to reschedule must be submitted at least three (3) days prior to the hearing. A request to reschedule a hearing must be supported by a compelling reason. Given the number of individuals involved in a hearing, and the attendant difficulty of scheduling and rescheduling them in a timely manner, it may not be possible to accommodate all scheduling requests. The Title IX Coordinator may also reschedule a hearing, without a request by the parties, when there is reasonable cause to do so.

**4. Hearing Format**

The hearing will be live and will provide the parties an opportunity to address the Decision-maker(s) in person. Participants may be physically present in the same geographic location, or at the College's discretion, some or all of the hearing may be conducted remotely, using virtual platforms (i.e., video conferencing). Upon request to the Title IX Coordinator, a party may participate in the hearing remotely. Such requests for remote participation should be made at least two (2) days in advance of the scheduled hearing.

**5. Pre-Hearing Conferences**

At least three (3) days prior to the hearing, the Title IX Coordinator and the Decision-maker(s) will meet with the parties and their advisors, separately, for the purposes of conducting a pre-hearing conference. At the pre-hearing conference, the Decision-maker(s) will review these procedures, the Rules of Decorum, and the proposed hearing schedule and the parties will be permitted to ask questions. The Decision-maker(s) will not discuss matters of evidence of evidentiary issues with the parties during the pre-hearing conference.

**6. Impact Mitigation Statements**

The parties will be permitted, but not required, to prepare a written Impact/Mitigation Statement relevant to any sanctions. The parties may submit the statement up until the start of a hearing. The statements are distributed to the Decision-maker(s) and the parties only if the Decision-maker(s) finds the

Respondent responsible. The Title IX Coordinator will provide the Impact/Mitigation Statements to the parties with a copy of the Decision Maker(s)'s written decision.

## 7. Hearing Procedures

Typically, the format of the hearing will be as follows:

### a. Opening Instructions

The hearing will begin with opening instructions by the Hearing Chair. The parties will be afforded the opportunity to ask questions about the format of the hearing and these procedures at the conclusion of the Chair's opening instructions.

### b. Testimony

The Decision-maker(s) will determine the order of testimony. The Decision-maker(s) will question the party or witness first, followed by cross examination of a party by the other party's advisor. In the case of witness testimony, the Decision-maker(s) will question the witness first, followed by cross examination of the witness, first by Complainant's advisor and next, by the Respondent's advisor.

During cross examination, the party's advisor will be permitted to ask the opposing parties and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Before a Complainant, Respondent, or witness responds to a question by a party's advisor, the Decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

The Decision-maker(s) retain authority to ask questions at any time during testimony, including during cross examination by the advisors.

### c. Closing Remarks by the Hearing Chair

At the conclusion of testimony, the Hearing Chair will conclude the proceedings with brief closing remarks.

## 8. Determination Regarding Responsibility and Notice of Outcome

The Decision-maker(s) will determine whether Respondent is responsible of the alleged violation(s) of the Policy by a majority vote based upon a preponderance of the evidence standard. The Decision-maker(s) retains discretion regarding the weight or credibility to assign the evidence. If the Decision-maker(s) make a finding of responsibility, the Decision-maker(s) will determine the appropriate sanctions and remedies.

In matters where a finding of responsibility is made, the Decision-maker(s) will consider the Impact/Mitigation statements of the parties prior to determining sanction.

The Decision-maker(s) will issue a written determination of findings that will include the procedural steps taken during the investigation, the specific prohibited conduct for which the Respondent was found responsible and not responsible with identification of the allegations potentially constituting Title IX sexual harassment, the findings of fact and the rationale for the Decision Maker(s)'s determinations regarding both responsibility and sanctions, whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the Complainant, sanctions and remedies if the Respondent is found responsible, and, instructions and time limits for appeals.

The decision may incorporate and reference any portions of the proceedings, including the evidence file and investigative report, as the Decision-maker(s) deems appropriate. Both the Complainant and the



Respondent will be simultaneously provided with a notice of outcome and the Decision-maker(s) written determination.

#### 9. **Hearing Record**

An audio recording will be made of all hearings, but not of deliberations. The parties may listen to the audio recording of the hearing. Access will be facilitated in a manner deemed appropriate by the Title IX Coordinator.

Individuals appearing before the Decision-maker(s), whether as a party or witness, are prohibited from recording any portion of the hearing. The Decision-maker(s) members are also prohibited from recording any portion of the hearing.

The Decision-maker(s) has access to the hearing record. The hearing record will include: the audio recording and written transcript of the hearing, the Decision-maker(s)'s final determination, the final evidence file and investigative report, and if there is a determination of responsibility, the parties' Impact/Mitigation Statements, and information concerning the Respondent's prior misconduct.

## ***V. Evidentiary Considerations***

### 1. **Relevance**

Determinations regarding relevance of any proffered evidence will be subject to the following requirements:

#### a. **Prior Sexual History of Complainant**

Evidence and questions about the Complainant's sexual predisposition or prior sexual behavior are considered irrelevant unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

#### b. **Prior or Subsequent Conduct**

Prior or subsequent conduct of a Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of conduct prohibited by this policy by a Respondent, either before or after the incident in question, regardless of whether there has been a finding of a Policy violation, may be deemed relevant to a determination of responsibility.

#### **Mental Health Condition, Treatment or Diagnosis**

#### c. Generally, during both the investigation and any hearing to determine responsibility, evidence of the party's mental health diagnosis or treatment is irrelevant and will not be permitted without the party's consent.

#### d. **Privilege**

The investigator(s) and Decision-maker(s) will not allow or rely upon, or otherwise permit questions or evidence that is protected by a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### 2. **Newly Offered Evidence**

If, after the issuance of the final evidence file and investigative report and prior to the issuance of the Decision-maker(s) decision, including at the hearing, a party or the investigator seek to present a witness or introduce evidence not offered prior to the hearing and not disclosed to the investigator, the

Decision-maker(s) may grant admission of the evidence such request upon a showing that the witness or evidence is relevant, material, newly discovered, and could not have been discovered during the investigation with due diligence.

Where Decision-maker(s) permit a party to introduce a newly discovered witness or evidence, the Decision-maker(s) will reschedule or adjourn the hearing for the investigator to investigate the newly discovered witness or evidence and, if appropriate to amend the final evidence file and investigative report.

## Appendix B: Procedures for the Formal Resolution of Formal Complaints of Non-Title IX Prohibited Conduct by Students

### ***I. Scope of These Procedures***

The procedures set forth below will guide the investigation and adjudication of Formal Complaints of Non-Title IX Prohibited Conduct, as defined in Section VI(2) of the Policy, where the Respondent is a student.

### ***II. Initiation of the Investigation***

An investigation under these procedures will be initiated at the Title IX Coordinator's direction after the filing of a Formal Complaint and the issuance of a Notice of Allegations to the parties.

### ***III. The Investigation***

#### **1. Overview of the Investigation**

The investigation is a neutral fact-gathering process. During the investigation, the parties will have an equal opportunity to be heard, to submit evidence, to identify witnesses who have relevant information, including fact and expert witnesses, and to submit questions that they believe should be directed by the investigator to each other or to any witness. The investigators will also seek to obtain relevant evidence identified during the investigation, including relevant evidence that has not been offered by either party. The College may continue an investigation without the participation of any party.

#### **2. The Investigator**

Investigations will be conducted by one or more appropriately trained individuals appointed by the Title IX Coordinator. The Investigator(s) will be impartial and will conduct a prompt, thorough, and fair investigation. The Investigator(s) may be a College employee or an external party.

#### **3. Evidence Collection**

##### **a. Testimonial Evidence Collection: Investigative Interviews**

Testimony is evidence. Thus, throughout the investigation, the Investigator(s) will endeavor to interview the parties and other individuals (witnesses) who have information that is relevant or directly related to the allegations in the Formal Complaint, including fact and expert witnesses. The Investigator(s) will provide to everyone whose participation in an investigative interview is invited or expected written notice of the date, time, and location of the interview, and the parties will be given a sufficient time to prepare to participate.

If a party declines to participate in investigative interviews deemed necessary by the investigator, the party will forfeit the opportunity at the hearing to provide testimony at the hearing. If a witness declines to participate in an investigative interview, they will not be permitted to provide testimony at the hearing.

Investigative interviews may be conducted in person, or via telephone or video conference. Investigative interviews will be recorded. Following the investigative interview, the Investigator(s) will prepare a full written summary of the interview ("Interview Summary"). This summary will be shared with the interviewee and the interviewee will be provided three (3) business days to submit, in writing to the investigator, any corrections to, or comments about, or proposed changes to, the interview summary that the interviewee believes is necessary to ensure the accuracy of the interview summary. Submissions made by the interviewee will be attached to the original summary. The deadline for submitting a response may be extended for good cause, upon request to the

Investigator(s). If no response is received from the interviewee, the summary prepared will be presumed accurate.

**b. Non-Testimonial Evidence Collection**

During the investigative interviews, the Investigator(s) will gather other available evidence and information that is directly related to the allegations in the Formal Complaint, including, without limitation, electronic and other records of communications between the parties or witnesses (via voicemail, text message, audio messages, email, or social media sites), photographs and videos, medical records (subject to required consent), and records generated by public safety or law enforcement.

**c. Evidence Collection Logs**

The Investigator(s) will maintain a log of all testimonial and non-testimonial evidence obtained and the source of such evidence. The Investigator(s) will also maintain a log of all testimonial and non-testimonial evidence offered or sought, but not obtained, and the reason such evidence was not obtained. These logs will be made a part of the evidence file.

**4. Review of the Draft Investigative Report and Draft Evidence File**

**a. The Draft Evidence File**

At the conclusion of the investigation, the Investigators will compile all of the evidence that is directly related to the allegations in the Formal Complaint, including the summaries of the statements the parties and witness, evidence that is both inculpatory and exculpatory, and evidence upon which the investigator does not intend to rely. This compilation of evidence will be referred to as the "Draft Evidence File."

The Draft Evidence File will be intentionally organized to support comprehension and will be divided into at least two sections. One section will include evidence obtained that the Investigator(s) deems relevant to the allegations in the Formal Complaint. The other section(s) will include evidence that the Investigator(s) do not deem relevant, but that is otherwise directly related to the allegations in the Formal Complaint.

**b. The Draft Investigative Report**

The Investigator(s) will also prepare a "Draft Investigative Report" that fairly summarizes the relevant evidence. The Draft Investigative Report will not include any findings.

**c. Review and Opportunity to Respond**

Upon completion, the Investigator(s) will share the Draft Evidence File and Draft Investigative Report with the parties and their advisors electronically, or by hard copy. The parties will then be afforded ten (10) business days to review the Draft Evidence File and Draft Investigative Report and to submit an optional written response, which may include responses to the evidence and requests that the Investigator(s) accept, seek, or obtain additional evidence or conduct follow up inquiries of the other party(ies) or witnesses. The parties' responses may also include challenges to the Investigator's assessment of relevance. Any responses submitted by the parties will be shared with the other party and made a part of the Final Evidence File.

**d. Additional Evidence Collection**

The Investigator(s) will consider the written responses of the parties, if any, and will determine in their sole discretion, whether further investigative steps are required. If additional investigative steps are taken that result in collection of additional evidence, such additional evidence will be included in the Draft Investigative File and incorporated, as appropriate, into the Draft Investigative Report. The new evidence and any changes to the Draft Investigative Report and will be shared

with the parties and their advisors electronically, or by hard copy. The parties will be provided with a final opportunity to respond, in writing. The Investigator will determine the length of this review period.

Any additional responses submitted will be shared with the other party and made a part of the Final Evidence File.

**e. Prohibition of Evidence Not Offered During the Investigation**

In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the Investigator(s) during the investigation or during this designated response and review period will not be considered in the determination of responsibility for a violation of the Policy, and will not be considered during the hearing process.

**5. Final Investigative Report and Final Evidence File**

At the conclusion of the fact gathering process and the review periods, as described in this Procedure, the Investigator(s) will prepare a Final Investigative File and Investigative Report.

**a. The Final Investigative File**

The Final Investigative File will include all of the evidence that is directly related to the allegations in the Formal Complaint, including the summaries of the statements the parties and witness, evidence that is both inculpatory and exculpatory, and evidence upon which the College does not intend to rely. The Final Investigative File will also include any responses submitted by the parties during the evidence review period and a timeline of all procedural steps taken by the College from the time of the filing of the Formal Complaint to the conclusion of the investigation.

The Final Evidence File will be intentionally organized to support comprehension and will be divided into at least two sections. One section will include evidence obtained that the Investigator(s) deems relevant to the allegations in the Formal Complaint. The other section(s) will include evidence that the Investigator(s) do not deem relevant, but that is otherwise directly related to the allegations in the Formal Complaint. The final section will include the procedural timeline.

**b. The Final Investigative Report**

The Final Investigative Report will be prepared by the Investigator(s) and will fairly summarize all of the relevant evidence obtained during the investigation. Relevance Determinations are generally guided by the principles set forth below in Section V of this Procedure.

**c. Submission of the Final Investigative Report and Evidence File to the Parties**

The Final Investigative Report and Evidence File will be simultaneously provided to the parties and their advisors in electronic format or hard copy, at least ten (10) business days prior to a hearing. The parties will have ten (10) business days to submit a written response to the Final Investigative Report and Evidence File.

The Final Investigative Report and Evidence File, and any written responses submitted by the parties will be provided to the Decision Maker(s).

## ***IV. The Hearing***

**1. Overview**

Upon conclusion of the investigation, a hearing will be held to determine whether the Respondent is responsible for the alleged policy violations in the Formal Complaint. As set forth in Section X of this Policy, the Respondent is presumed not responsible. A Respondent will be found responsible for violating this Policy only when such a finding is supported by the Preponderance of the Evidence.

The hearing is a private proceeding. The only people present will be the parties, their advisors, the Decision-maker(s), witnesses (when testifying), and any staff necessary for conducting the hearing.

## 2. Hearing Participants

### a. Decision-makers

The College will designate the Decision-maker for the moderation of the hearing and determination of finding and sanction. This may take the form of a single decision-maker or a three-member panel at the Title IX Coordinator's discretion. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator. The Decision-maker(s) may not be the Title IX Coordinator, a facilitator of informal resolution, or the investigator.

Upon receipt of the notice of the Decision-Maker or three-member panel, Parties will have three (3) business days to object to the appointment of a Decision-maker, on the basis of demonstrated bias or conflict of interest.

### b. The Parties

The Parties are permitted to participate in the entirety of hearing, portions thereof, or they can decline to participate in the hearing entirely, and the Decision-maker(s) will not draw an adverse inference against a party based solely on their decision not to participate in all or some of the hearing proceedings.

In accordance with Section III(3)(a) of these procedures, if a party declined to participate in investigative interviews deemed necessary by the investigator, the party will not be permitted the opportunity to provide testimony at the hearing.

Nonetheless, if a party who has so declined to participate in investigative interviews later seeks to participate in a hearing, upon a finding that there was a compelling reason for the nonparticipation, the Hearing Chair, upon the Chair's discretion, may permit the party to participate. If the Hearing Chair permits the party to participate in the hearing, the Hearing Chair will first reschedule or adjourn the hearing for the investigator to interview the party and, as necessary, conduct any follow-up investigation and supplement and revise the evidence file and the investigative report.

### c. Advisors

The parties have the right to have an advisor of their choice present at the hearing in accordance with Section X(2) of this Policy. If a party does not have an advisor of choice, the Title IX Coordinator will appoint an advisor to that party for the sole purpose of conducting cross examination of other party and witnesses. A party's advisor of choice or an advisor appointed by the Title IX Coordinator may participate in the hearing for the sole purpose of conducting cross examination in the absence of their advisee.

As set forth in Section X(2) of this Policy, Advisors may not speak on behalf of the parties or otherwise participate in, or in any manner delay or disrupt the hearing. If an advisor fails to comply with the procedures set forth herein or the established rules of decorum, the College reserves the right to exclude the advisor from further participation in the process. The Title IX Coordinator is responsible for interpreting and applying this provision.

### d. Witnesses

The Decision-maker(s) will determine, in their sole discretion, which witnesses will be invited to provide testimony at the hearing. Witnesses who are invited to participate in the hearing will be permitted to attend the hearing only when providing testimony.



In accordance with Section III(3)(a) of these procedures, a witness who declined to participate in an investigative interview will not be permitted to provide testimony at the hearing.

However, if a witness who has so declined to participate in investigative interviews later seeks to participate in a hearing, upon a finding that there was a compelling reason for the nonparticipation, the Decision-maker(s), upon their discretion, may permit the party to participate. If the Decision-maker(s) permits the party to participate in the hearing, the Decision-maker(s) will first reschedule or adjourn the hearing for the investigator to interview the party and, as necessary, conduct any follow-up investigation and supplement and revise the evidence file and the investigative report.

**e. Hearing Facilitators**

The orderly administration of hearings will be supported by Hearing Facilitators, who are individuals either internal or external to the College and appointed by the Title IX Coordinator.

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.

**3. Notice of Hearing**

The Title IX Coordinator will notify the parties in writing of the date, time, and location/format of the hearing. The notice will include the charges at issue; a brief summary of the alleged prohibited conduct; and the applicable procedures under this Policy. All efforts will be made to provide the Notice of Hearing no later than five (5) days prior to the hearing and to schedule the hearing as soon as practicable.

Either party may request to have a hearing rescheduled. The request may be granted at the discretion of the Title IX Coordinator. Absent extenuating circumstances, requests to reschedule must be submitted at least three (3) business days prior to the hearing. A request to reschedule a hearing must be supported by a compelling reason. Given the number of individuals involved in a hearing, and the attendant difficulty of scheduling and rescheduling them in a timely manner, it may not be possible to accommodate all scheduling requests. The Title IX Coordinator may also reschedule a hearing, without a request by the parties, when there is reasonable cause to do so.

**4. Hearing Format**

The hearing will be live and will provide the parties an opportunity to address the Decision-maker(s) in person. Participants may be physically present in the same geographic location, or at the College's discretion, some or all of the hearing may be conducted remotely, using virtual platforms (i.e., video conferencing). Upon request to the Title IX Coordinator, a party may participate in the hearing remotely. Such requests for remote participation should be made at least two (2) days in advance of the scheduled hearing.

**5. Pre-Hearing Conferences**

At least three (3) days prior to the hearing, the Title IX Coordinator and the Decision-maker(s) will meet with the parties and their advisors, separately, for the purposes of conducting a pre-hearing conference. At the pre-hearing conference, the Decision-maker(s) will review these procedures, the Rules of Decorum, and the proposed hearing schedule and the parties will be permitted to ask questions.

The Decision-maker(s) will not discuss matters of evidentiary issues with the parties during the pre-hearing conference.

**6. Impact Mitigation Statements**

The parties will be permitted, but not required, to prepare a written Impact/Mitigation Statement relevant to any sanctions. The parties may submit the statement up until the start of a hearing. The statements are

distributed to the Decision-maker(s) and the parties only if the Decision-maker(s) finds the Respondent responsible. The Title IX Coordinator will provide the Impact/Mitigation Statements to the parties with a copy of the Decision Maker(s)'s written decision.

## 7. Hearing Procedures

Typically, the format of the hearing will be as follows:

### a. Opening Instructions

The hearing will begin with opening instructions by the Hearing Chair. The parties will be afforded the opportunity to ask questions about the format of the hearing and these procedures at the conclusion of the Chair's opening instructions.

### b. Testimony

The Decision-maker(s) will determine the order of testimony. The Decision-maker(s) will question the party or witness first, followed by cross examination of a party by the other party's advisor. In the case of witness testimony, the Decision-maker(s) will question the witness first, followed by cross examination of the witness, first by Complainant's advisor and next, by the Respondent's advisor.

During cross examination, the party's advisor will be permitted to ask the opposing parties and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Before a Complainant, Respondent, or witness responds to a question by a party's advisor, the Decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

The Decision-maker(s) retains authority to ask questions at any time during testimony, including during cross examination by the advisors.

### c. Closing Remarks by the Hearing Chair

At the conclusion of testimony, the Hearing Chair will conclude the proceedings with brief closing remarks.

## 8. Determination Regarding Responsibility and Notice of Outcome

The Decision-maker(s) will determine whether Respondent is responsible of the alleged violation(s) of the Policy by a majority vote based upon a preponderance of the evidence standard. The Decision-maker(s) retains discretion regarding the weight or credibility to assign the evidence. If the Decision-maker(s) makes a finding of responsibility, the Decision-maker(s) will determine the appropriate sanctions and remedies.

In matters where a finding of responsibility is made, the Decision-maker(s) will consider the Impact/Mitigation statements of the parties prior to determining sanction.

The Decision-maker(s) will issue a written determination of findings that will include the procedural steps taken during the investigation, the specific prohibited conduct for which the Respondent was found responsible and not responsible with identification of the allegations potentially constituting Title IX sexual harassment, the findings of fact and the rationale for the Decision Maker(s)'s determinations regarding both responsibility and sanctions, whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the Complainant, sanctions and remedies if the Respondent is found responsible, and, instructions and time limits for appeals.

The decision may incorporate and reference any portions of the proceedings, including the evidence file and investigative report, as the Decision-maker(s) deems appropriate. Both the Complainant and the

Respondent will be simultaneously provided with a notice of outcome and the Decision-maker(s) written determination.

#### 9. **Hearing Record**

An audio recording will be made of all hearings, but not of deliberations. The parties may listen to the audio recording of the hearing. Access will be facilitated in a manner deemed appropriate by the Title IX Coordinator.

Individuals appearing before the Decision-maker(s), whether as a party or witness, are prohibited from recording any portion of the hearing. The Decision-maker(s) members are also prohibited from recording any portion of the hearing.

The Decision-maker(s) has access to the hearing record. The hearing record will include: the audio recording and written transcript of the hearing, the Decision-maker(s)'s final determination, the final evidence file and investigative report, and if there is a determination of responsibility, the parties' Impact/Mitigation Statements, and information concerning the Respondent's prior misconduct.

## ***V. Evidentiary Considerations***

### 1. **Relevance**

Determinations regarding relevance of any proffered evidence will be subject to the following requirements:

#### a. **Prior Sexual History of Complainant**

Evidence and questions about the Complainant's sexual predisposition or prior sexual behavior are considered irrelevant unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

#### b. **Prior or Subsequent Conduct**

Prior or subsequent conduct of a Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of conduct prohibited by this policy by a Respondent, either before or after the incident in question, regardless of whether there has been a finding of a Policy violation, may be deemed relevant to a determination of responsibility.

#### c. **Mental Health Condition, Treatment or Diagnosis**

Generally, during both the investigation and any hearing to determine responsibility, evidence of the party's mental health diagnosis or treatment is irrelevant and will not be permitted without the party's consent.

#### d. **Privilege**

The investigator(s) and Decision-maker(s) will not allow or rely upon, or otherwise permit questions or evidence that is protected by a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### 2. **Newly Offered Evidence**

If, after the issuance of the final evidence file and investigative report and prior to the issuance of the Decision-maker(s) decision, including at the hearing, a party or the investigator seek to present a witness or introduce evidence not offered prior to the hearing and not disclosed to the investigator, the

Decision-maker(s) may grant admission of the evidence such request upon a showing that the witness or evidence is relevant, material, newly discovered, and could not have been discovered during the investigation with due diligence.

Where Decision-maker(s) permits a party to introduce a newly discovered witness or evidence, the Decision-maker(s) will reschedule or adjourn the hearing for the investigator to investigate the newly discovered witness or evidence and, if appropriate to amend the final evidence file and investigative report.

## **Appendix C: Procedures for the Formal Resolution of Formal Complaints of Non-Title IX Prohibited Conduct by Employees**

- In a situation where the complainant and respondent are employees or contractors, all appropriate employment guidelines will be followed for investigation and resolution.
- In a situation where the complaint is a student and respondent is an employee, all appropriate employment guidelines will be followed for resolution.
- In a situation where the respondent is a student and the complainant is faculty, staff or a contractor, all appropriate guidelines & policies detailed in the Title IX policy in the Student Handbook will be followed.

## Appendix D: Resources for Support

### Resources for Victims of Sexual Assault

There are many services established to assist individuals who have been sexually assaulted. The following may be contacted to provide assistance or for any questions:

- **Washington College Health Services**, ext. 7261 (confidential resource)
- **Washington College Counseling Services**, ext. 7261 (confidential resource)
- **For All Seasons Sexual Assault Crisis Center**, 1-800-310-7273 (a 24-hour confidential service that provides counseling, advocacy, and support to survivors)
- **Title IX Coordinator**, ext. 7752
- **Office of Public Safety**, ext. 7810

A member of Public Safety is available 24 hours a day, seven days a week to transport the Complainant to either hospital listed below if requested. Volunteers from the For All Seasons Sexual Assault Crisis Center are also available to provide counseling and assistance throughout this process.

Two area hospitals have sexual assault response programs in place, including Department of State Police Sexual Assault Evidence Collection Kits. Forensic Nurse Examiners are available 24 hours a day, seven days a week to provide confidential medical examination and STI and pregnancy prophylactics. The programs work in conjunction with For All Seasons, Inc. to provide advocacy support to victims.

- University of Maryland Shore Medical Center at Chestertown, located adjacent to Washington College: 410-778-3300
- University of Maryland Shore Medical Center at Easton: 410-822-1000

Trained Title IX Advocates are available to support both a complainant and respondent through all aspects of the Title IX process. These individuals receive training annually to assist students in dealing with the Title IX process.

### Sexual Assault Campus Climate Survey

Beginning in 2016, in compliance with Maryland House Bill 571, Washington College conducts a sexual assault campus climate survey every two years. Survey data will be utilized to inform our response, prevention and education efforts.