

Washington & Jefferson College  
Sexual Misconduct Policy & Procedures

Washington & Jefferson College may make changes to this policy on an as needed basis to ensure compliance with federal and/or state regulatory updates, changes, and/or modifications. This document is current and effective as of **1 August 2024**.

**EMERGENCY ASSISTANCE:**

Personal safety and well-being should be the priority for any individual who has experienced sexual harassment, misconduct, or violence, including sexual assault. Emergency assistance is available by calling 911 or law enforcement, and/or seeking medical treatment. Additionally, these are the best options to ensure preservation of evidence, to file criminal charges immediately or at a later date.

**INTRODUCTION:**

1. Nondiscrimination Policy. Washington & Jefferson College does not discriminate on the basis of sex and prohibits sex discrimination in any education program/activity that it operates, as required by Title IX and this part, including admission and employment. Inquiries about the application of Title IX to the recipient may be referred to Washington & Jefferson's Title IX Coordinator, the Office for Civil Rights (OCR), or both.
2. Application. This sexual misconduct policy applies to all sex discrimination occurring under Washington & Jefferson College's education program or activity in the United States. Conduct that occurs under Washington & Jefferson College's education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by W&J and conduct that is subject to W&J's disciplinary authority. Washington & Jefferson College has the obligation to address a sex-based hostile environment under its education program or activity, even when some of the conduct alleged to be contributing to the hostile environment occurred outside the W&J's education program or activity or outside the United States.

**RATIONALE FOR THE POLICY**

Washington & Jefferson College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Washington & Jefferson College has

developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. Washington & Jefferson College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

### **1. Applicable Scope**

The core purpose of this policy is the prohibition of all forms of discrimination. Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this antidiscrimination policy is reported, the allegations are subject to resolution using Washington & Jefferson College's policy and procedure, and as detailed below.

When the Respondent is a member of the Washington & Jefferson College community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Washington & Jefferson College community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

### **2. Title IX Coordinator**

Title IX Coordinator oversees implementation of the Washington & Jefferson College's Equal Opportunity plan and the College's policy on equal opportunity, harassment, and nondiscrimination. The Title IX Coordinator has the primary responsibility for coordinating Washington & Jefferson College's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

### **3. Independence and Conflict-of-Interest**

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against

Complainants and/or Respondents, generally. To raise any concern involving bias, conflict of interest, or misconduct by the Title IX Coordinator, contact the Washington & Jefferson College President's Office. Concerns of bias, conflict of interest, or misconduct by any other Title IX Team member should be raised with the Title IX Coordinator.

## **SECTION I - REPORTING:**

### **1. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- a. File a complaint with, or give verbal notice to, the Title IX Coordinator. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator.

Washington & Jefferson Title IX Coordinator  
60 South Lincoln Street  
Washington, PA 15301  
724-503-6878  
[titleix@washjeff.edu](mailto:titleix@washjeff.edu)

- b. Report online, using the reporting form posted at [https://cm.maxient.com/reportingform.php?WashJeffCollege&layout\\_id=6](https://cm.maxient.com/reportingform.php?WashJeffCollege&layout_id=6)

It is important to note that while the institution will evaluate all reports of sexual assault and sexual harassment, the institution's ability to investigate and respond to allegations may be limited depending on the information provided in the report. Individuals are encouraged to review the institution's policy for investigating reports of sexual violence for more information about procedures and resources. Only the Title IX Coordinator has access to those reports. Information gathered in the online system will be used to begin the resolution process, which may involve a formal investigation. Anonymous reports are accepted but can give rise to a need to investigate. Washington & Jefferson College tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as Washington & Jefferson College respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows Washington & Jefferson College to discuss and/or provide supportive measures.

## **2. Supportive Measures**

Washington & Jefferson College will offer and implement appropriate and reasonably available supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to Washington & Jefferson College's education program or activity, including measures designed to protect the safety of all parties or Washington & Jefferson College's educational environment, and/or deter harassment, discrimination, and/or retaliation. The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, Washington & Jefferson College will inform the Complainant, in writing, that they may file a formal complaint with Washington & Jefferson College either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

Washington & Jefferson College will maintain the privacy of the supportive measures, if privacy does not impair Washington & Jefferson College's ability to provide the supportive measures. Washington & Jefferson College will act to ensure as minimal an academic/occupational impact on the parties as possible. Washington & Jefferson College will implement measures in a way that does not unreasonably burden the other party. These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Student financial aid counseling
- Education to the institutional 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
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Any other actions deemed appropriate by the Title IX Coordinator

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

### **3. Emergency Removal**

Washington & Jefferson College can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the Campus & Public Safety Chief of Police and the Office of Community Standards.

In all cases in which an emergency removal is imposed, the Respondent will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. There is no appeal process for emergency removal decisions.

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

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics. At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties. Where the Respondent is an employee, existing provisions for interim action are applicable.

#### **4. Promptness**

All allegations are acted upon promptly by Washington & Jefferson College once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but Washington & Jefferson College will avoid all undue delays within its control. Any time the general timeframes for resolution outlined in Washington & Jefferson College procedures will be delayed, Washington & Jefferson College will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed because of the delay.

#### **5. Privacy**

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

Washington & Jefferson College reserves the right to determine which Washington & Jefferson College officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA). Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: [Office of Student Affairs, Office of Academic Affairs, and Campus & Public Safety]. Information will be shared as necessary with Investigators, Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

#### **6. Jurisdiction of Washington & Jefferson College**

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

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Washington & Jefferson College's educational program. The

recipient may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial Washington & Jefferson College interest.

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

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

If the Respondent is unknown or is not a member of Washington & Jefferson College community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. Further, even when the Respondent is not a member of Washington & Jefferson College's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator. In addition, Washington & Jefferson College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Washington & Jefferson College property and/or events.

All vendors serving Washington & Jefferson College through third-party contracts are subject to the policies and procedures of their employers.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies. Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to Washington & Jefferson College where sexual harassment or nondiscrimination

policies and procedures of the facilitating or host organization may give recourse to the Complainant.

## **7. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to Washington & Jefferson College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible. Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

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

## **8. Online Harassment and Misconduct**

The policies of Washington & Jefferson College are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or influence Washington & Jefferson College's education program and activities or use Washington & Jefferson College networks, technology, or equipment.

Although Washington & Jefferson College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to Washington & Jefferson College, it will engage in a variety of means to address and mitigate the effects. Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of Washington & Jefferson College community.

## **9. Policy on Disability Discrimination and Accommodation in the Resolution Process**

Washington & Jefferson College is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities. The Director, Academic Success has been designated as Washington & Jefferson College's ADA Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance

or discrimination based on disability. If a Complainant or Respondent is a student with a disability, the Title IX Coordinator may consult with the Director of Academic Success to determine what, if any, accommodations either party may need during the investigation or grievance process.

Washington & Jefferson College is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to Washington & Jefferson College's resolution process.

Anyone needing such accommodations or support should contact the Director of Academic Success or the Office of Human Resources, if employee, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

#### **10. WHEN A COMPLAINANT DOES NOT WISH TO PROCEED**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law. The Title IX Coordinator has ultimate discretion over whether Washington & Jefferson College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires Washington & Jefferson College to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Washington & Jefferson Colleges may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

Note that Washington & Jefferson College's ability to remedy and respond to notice may be limited if the Complainant does not want Washington & Jefferson College to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing Washington & Jefferson College's obligation to protect its community. In cases in which the Complainant request confidentiality/no formal action and the circumstances allow Washington & Jefferson College to honor that request, Washington & Jefferson College will offer informal resolution options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by Washington & Jefferson College, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

## **SECTION II - PROHIBITED CONDUCT**

### **1. Policy on Hostile Environment Harassment**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. Washington & Jefferson College's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under Washington & Jefferson College policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of Washington & Jefferson College policy, though supportive measures will be offered to those impacted. All policies encompass actual and/or attempted offenses.

#### **a. Hostile Environment Harassment**

Hostile environment harassment is unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from Washington & Jefferson College's educational program or activity (*i.e., creates a hostile environment*). that is prohibited by Washington & Jefferson College policy. Hostile environment harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

Washington & Jefferson College does not tolerate discriminatory harassment of any employee, student, visitor, or guest. Washington & Jefferson College will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment." A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.<sup>1</sup> This discriminatory effect results from harassing verbal, written, graphic, or physical conduct

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that is severe or pervasive **and** objectively offensive. When discriminatory harassment rises to the level of creating a hostile environment, Washington & Jefferson College may also impose sanctions on the Respondent through application of the grievance process below.

#### **b. Sex-based Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the Commonwealth of Pennsylvania regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Washington & Jefferson College has adopted the following definition of Sex-based Harassment. Acts of sex-based harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. Sex-based Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as: Conduct on the basis of sex/gender or that is sexual that satisfies one or more of the following:

- 1) Quid Pro Quo:
  - a. an employee, agent, or other person authorized by the recipient,
  - b. conditions (implicitly or explicitly) the provision of an aid, benefit, or service of the recipient,
  - c. on an individual's participation in unwelcome sexual conduct.
  
- 2) Hostile Environment Harassment:
  - a. unwelcome sex-based conduct,
  - b. totality of the circumstances,
  - c. subjectively and objectively offensive,
  - d. to be so severe, or pervasive
  - e. that it effectively limits or denies a person equal access to Washington & Jefferson College's education program or activity.
  
- 3) Sexual assault, defined as:
  - a. Sex Offenses, Forcible;
    - o Any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of. Giving consent.
  
  - b. Sex Offenses, Non-forcible:
    - o Incest:
      - 1) Non-forcible sexual intercourse,
      - 2) between persons who are related to each other,

3) within the degrees wherein marriage is prohibited by Pennsylvania law.

o Statutory Rape:

- 1) Non-forcible sexual intercourse,
- 2) with a person who is under the statutory age of consent.

4) Dating Violence, defined as:

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

5) Domestic Violence, defined as:

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

\*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6) Stalking, defined as:

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

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Washington & Jefferson College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

### **c. Force, Coercion, Consent, and Incapacitation**

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (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 unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Consent is:**

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

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

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

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Washington & Jefferson College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Washington & Jefferson College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes nonkink relationships as a default.

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

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

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

#### **d. Other Civil Rights Offenses**

In addition to the forms of sexual harassment described above, which are covered by Title IX, Washington & Jefferson College additionally prohibits the following offenses as forms of discrimination that may be within or outside of Title IX when the act is based upon the Complainant's actual or perceived membership in a protected class.

- Sexual Exploitation, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
  - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
  - Invasion of sexual privacy.
  - Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
  - Prostituting another person
  - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection
  - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to nonconsensual sexual activity

- Misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections
  - Forcing a person to take an action against that person’s will by threatening to show, post, or share information, video, audio, or an image that depicts the person’s nudity or sexual activity
  - Knowingly soliciting a minor for sexual activity
  - Engaging in sex trafficking
  - Creation, possession, or dissemination of child pornography
- Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
  - Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
  - Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
  - Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within Washington & Jefferson College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity as defined further in the Hazing Policy;
  - Bullying, defined as:
    - Repeated and/or severe
    - Aggressive behavior
    - Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally.

Violation of any other Washington & Jefferson College policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

**e. Retaliation**

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Washington &

Jefferson College will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Washington & Jefferson College and any member of Washington & Jefferson College's community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure. The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith during a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

### **SECTION III - MANDATED REPORTING**

1. All Washington & Jefferson College employees who are not confidential employees (faculty, staff, administrators, student employees) are expected to report information about conduct that reasonably may constitute sex discrimination under Title IX. To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared. If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator, who will act when an incident is reported to them.
2. **EXCEPTION:** Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from Washington & Jefferson College. Supportive measures should be offered as the result of such disclosures without formal Washington & Jefferson College action.

3. Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of Washington & Jefferson College policy and can be subject to disciplinary action for failure to comply. Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though Washington & Jefferson College is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves. Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

### **CONFIDENTIAL RESOURCES**

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination
- Athletic trainers (if licensed and privileged under state statute, and/or working under the supervision of a health professional)
- Off-campus (non-employees):
  - Licensed professional counselors and other medical providers
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains
  - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Confidential employees are **required** to provide information about how to contact the Title IX Coordinator and how to make a complaint of sex discrimination. They must also explain that the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the grievance procedures.

Campus counselors and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

## **SECTION IV – PREGNANCY OR RELATED CONDITIONS**

Washington & Jefferson College does not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions.

### **1. Employee Responsibility**

When a student informs any employee of their pregnancy or related condition, the employee MUST promptly provide that student with the Title IX Coordinator's contact information and inform the student that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to Washington & Jefferson's education programs and/or activities.

### **2. Reasonable Modifications**

Washington & Jefferson College, in consultation with the student, will make reasonable modifications based on the student's individualized needs. Reasonable modifications may include but are not limited to; breaks during class to express breast milk in a designated lactation space, breastfeed, or attend to health needs associated with pregnancy or related conditions, including more frequent restroom breaks. Modifications may also include intermittent absences to attend medical appointments, extensions of time for coursework and rescheduling tests and examinations.

### **3. Voluntary Leaves of Absence**

Washington & Jefferson College will allow the student to voluntarily take a leave of absence from the education program to cover, at a minimum, the period of time deemed medically necessary by the student's licensed healthcare provider. When the student returns to Washington & Jefferson College, the student will be reinstated to the academic status and as practicable, to the extracurricular status that the student held when the voluntary leave began.

## **SECTION V - FEDERAL OBLIGATIONS**

### **1. Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Washington & Jefferson College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. Washington & Jefferson College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing

enough information for community members to make safety decisions considering the potential danger.

## **2. Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA-based crimes,<sup>2</sup> which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be shared with campus law enforcement regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log. Campus Security Authorities include: student affairs/student conduct staff, Campus & Public Safety/security, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

## **FALSE ALLEGATIONS AND EVIDENCE**

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

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

## **AMNESTY**

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<sup>2</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

Washington & Jefferson College encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to Washington & Jefferson College officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons. It is in the best interests of Washington & Jefferson College community that Complainants choose to report misconduct to Washington & Jefferson College officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Washington & Jefferson College maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident. Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

**Students:** Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to Campus & Public Safety).

Washington & Jefferson College maintains a policy of amnesty for students who offer help to others in need.

### **PRESERVATION OF EVIDENCE**

Those who experience sexual assault should take every precaution to preserve all evidence of the assault and abstain from tampering with any items at the scene, changing clothing, or washing any area of their body. In cases of sexual assault, domestic or dating violence, sexual harassment, and stalking, those affected should preserve all phone call logs, emails, text messages, and any other forms of communication.

### **SECTION VI - GRIEVANCE PROCEDURES**

## **1. Overview**

Washington & Jefferson College will act on any formal or informal notice/complaint of violation of the Policy that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures. If a situation arises where these procedures do not apply under this limited definition of harassment, retaliation, and/or misconduct, then the Title IX Coordinator will refer the parties to every applicable grievance process within other Washington & Jefferson College policies.

The procedures below apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations will proceed using these same grievance procedures, clarifying which policies above are applicable. Although the effect of the Title IX regulations can be confusing, these grievance procedures apply to all policies above.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student, faculty, and staff handbooks.

## **2. Notice/Complaint**

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps Washington & Jefferson College needs to take.

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

- 1) Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
- 2) An informal resolution; and/or
- 3) A Grievance Process including an investigation and possible hearing (upon submission of a complaint).

Washington & Jefferson College uses the Grievance Process to determine whether or not the Policy has been violated. If so, Washington & Jefferson College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

### **3. Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or an investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in informal resolution.
  - If a Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
    - If it does, the Title IX Coordinator will initiate the investigation and grievance process, directing the investigation to address:
      - an incident, and/or
      - a pattern of alleged misconduct, and/or
      - a culture/climate issue, based on the nature of the complaint.
    - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit Washington & Jefferson College’s authority to address a complaint with an appropriate process and remedies.

### **4. Dismissal of a Complaint**

Washington & Jefferson College may dismiss a complaint of sex discrimination made through the grievance procedures for any of the following reasons:

- 1) Washington & Jefferson College is unable to identify the respondent after taking reasonable steps to do so;
- 2) The Respondent is not participating in Washington & Jefferson's education program or activity and is not employed by W&J;
- 3) The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, or the conduct would not constitute sex discrimination under Title IX, even if proven.

Washington & Jefferson College may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

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

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

This dismissal decision is appealable by any party under the procedures for appeal below. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

## **5. Counterclaims**

Washington & Jefferson College is obligated to ensure that the grievance process is not abused for retaliatory purposes. Washington & Jefferson College permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, made for purposes of retaliation, instead. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the

Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

## **6. Right to an Advisor**

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

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

### **a. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the Washington & Jefferson College community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from Washington & Jefferson College, the Advisor will be trained by Washington & Jefferson College and be familiar with Washington & Jefferson College's resolution process.

If the parties choose an Advisor from outside the pool of those identified by Washington & Jefferson College, the Advisor may not have been trained by Washington & Jefferson College and may not be familiar with Washington & Jefferson College policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

### **b. Advisor's Role in Meetings and Interviews**

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

Washington & Jefferson College cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, Washington & Jefferson College is not obligated to provide an attorney.

### **c. Advisor Violations of Washington & Jefferson College Policy**

All Advisors are subject to the same Washington & Jefferson College policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

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

### **d. Sharing Information with the Advisor**

Washington & Jefferson College expects that the parties may wish to have Washington & Jefferson College share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

Washington & Jefferson College also provides a consent form that authorizes Washington & Jefferson College to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before Washington & Jefferson College is able to share records with an Advisor.

### **e. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them.

### **f. Expectations of an Advisor**

Washington & Jefferson College generally expects an Advisor to adjust their schedule to allow them to attend Washington & Jefferson College meetings when planned but may change

scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

Washington & Jefferson College may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

## **7. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with Washington & Jefferson College policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. Washington & Jefferson College encourages parties to discuss any sharing of information with their Advisors before doing so.

### **a. Informal Resolution**

Informal Resolution can include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- When the parties agree to resolve the matter through an alternate resolution mechanism as described below, [including mediation, restorative practices, etc.], usually before a formal investigation takes place; see discussion in b., below.
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post investigation); see discussion in c., below.

To initiate Informal Resolution, a Complainant needs to submit a complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue the Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Grievance Process.

Prior to implementing Informal Resolution, Washington & Jefferson College will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by Washington & Jefferson College.

Washington & Jefferson College will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

### **b. Alternate Resolution Mechanism**

Alternate Resolution is an informal mechanism [including mediation or restorative practices, etc.] by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution mechanism.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties;

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

### **c. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and Washington & Jefferson College are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of Washington & Jefferson College policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

#### **d. Negotiated Resolution**

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and Washington & Jefferson College. Negotiated Resolutions are not appealable.

### **8. Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the "NOIA") to the Respondent upon commencement of the Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that Washington & Jefferson College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to access all directly related and/or relevant evidence obtained during the review and comment period,

- A statement about Washington & Jefferson College's policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that Washington & Jefferson College's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview and grievance process,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

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

## **9. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process [including the Title IX Coordinator, Investigator(s), and Decision-maker(s)] may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable.

The Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

Washington & Jefferson College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

## **10. Steps in the Investigation Process**

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

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

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

- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's transcript of the testimony from their and the other party's respective interviews and meetings
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to access all the evidence obtained as part of the investigation that is directly related to the reported misconduct and not otherwise impermissible. Parties will be given ten (10) business days review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days.
- After the investigation is complete, all evidence will be kept secure in the Title IX Coordinator's office and can be accessed by the parties during the review period in the Title IX Coordinator's office with the coordinator and/or the Investigator(s) present.

- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- The Investigator(s) will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least five (5) business days prior to a hearing.

### **11. Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of Washington & Jefferson College are expected to cooperate with and participate in Washington & Jefferson College's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

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

### **12. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. Investigators will, at a minimum, produce an audio recording of every interview for the purpose of obtaining a written transcript. Both parties and witnesses will be reminded of audio or video recordings at the time of the interview.

### **13. Evidentiary Considerations in the Investigation**

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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. Within the boundaries stated above, the investigation can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

#### **14. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator may refer the matter for a hearing. The hearing should be held as soon as practical at the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

#### **15. Evidentiary Considerations in the Hearing**

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, 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.

Within the boundaries stated above, the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct. Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming Washington & Jefferson College uses a progressive discipline system. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

#### **16. Notice of Hearing**

No less than five (5) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.

- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least three (3) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Decision-Maker or Title IX Coordinator may reschedule the hearing.
- Notification that the parties must have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and Washington & Jefferson College will appoint one. Each party must have an Advisor present. There are no exceptions.
- An invitation to each party to submit an impact statement that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least three (3) business days prior to the hearing.
- Whether parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by Washington & Jefferson College and remain within the 60-90 business day goal for resolution. In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

### **17. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least three (3) business days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator know at least three (3) business days prior to the hearing so that appropriate arrangements can be made.

### **18. Hearing Procedures**

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the policy on Equal Opportunity, Harassment, and Nondiscrimination.

Participants at the hearing will include the Decision-Maker(s), the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent), Advisors to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services. Each party may also have one support person.

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

Witnesses who have relevant information will appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and the witnesses will then be excused.

### **19. The Order of the Hearing**

The Title IX Coordinator explains the procedures and introduces the participants. The Investigator(s) will then present a summary of the final investigation report and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Decision-maker will direct that it be disregarded.

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then the

Respondent. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Decision-maker. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (the proceeding will pause to allow the Decision-maker to consider it (and state it if it has not been stated aloud), and the Decision-maker will determine whether the question will be permitted, disallowed, or rephrased.

The Decision-maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Decision-maker has final say on all questions and determinations of relevance. The Decision-maker may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Decision-maker has ruled on a question.

Once questioning of each party and witness(s) is complete, the parties will have the opportunity to read an impact statement. The impact statement will not be used to determine responsibility but will be used during the deliberation process in determining appropriate sanctions, if necessary.

## **20. Recording Hearings**

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

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of Washington & Jefferson College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording.

## **21. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof is used. The Title IX Coordinator, if not serving as Decision-maker, will attend the deliberation, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding. The Decision-maker(s) will review the statements and any

pertinent conduct history provided by appropriate administrators and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

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

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

## **22. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Decision-maker to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within three (3) business days of receiving the Decision-maker(s) deliberation statement.

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

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by Washington & Jefferson College.

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

The Notice of Outcome will also include information on when the results are considered by

Washington & Jefferson College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### **23. Statement of the Rights of the Parties**

A Statement of Rights is contained in the Student, Employee, and/or Faculty Handbook.

### **24. Withdrawal or Resignation While Charges Pending**

**a. Students:** If a student has an allegation pending for violation of the Title IX Policy, Washington & Jefferson College may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from Washington & Jefferson College, the resolution process ends, as Washington & Jefferson College no longer has disciplinary jurisdiction over the withdrawn student.

However, Washington & Jefferson College will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to Washington & Jefferson College. Such exclusion applies to all campuses of Washington & Jefferson College. A hold will be placed on their ability to be readmitted. They may also be barred from Washington & Jefferson College property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely, and that student is not permitted to return to Washington & Jefferson College unless and until all sanctions have been satisfied.

**b. Employees:** Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as Washington & Jefferson College no longer has disciplinary jurisdiction over the resigned employee.

However, Washington & Jefferson College will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with Washington & Jefferson College, and the records retained by the Title IX Coordinator and Human Resources will reflect that status.

All Washington & Jefferson College responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## **25. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies owed by Washington & Jefferson College to the Respondent to ensure no effective denial of educational access.

Washington & Jefferson College will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair Washington & Jefferson College's ability to provide these services.

## **26. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair).

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

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

## **SECTION VII – SANCTIONS**

1. Factors considered when determining a sanction/responsive action may include, but are not limited to:
  - The nature, severity of, and circumstances surrounding the violation(s)
  - The Respondent's disciplinary history
  - Previous allegations or allegations involving similar conduct
  - The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
  - The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
  - The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
  - The impact on the parties
  - Any other information deemed relevant by the Decision-maker(s)

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

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

### **a. Student Sanctions**

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any Washington & Jefferson College policy, procedure, or directive will result in more severe sanctions/responsive actions.

- *Required Counseling*: A mandate to meet with and engage in either Washington & Jefferson College-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions if the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Washington & Jefferson College.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Washington & Jefferson College-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript, subject to any applicable expungement policies.
- *Withholding Diploma*: Washington & Jefferson College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: Washington & Jefferson College reserves the right to revoke a degree previously awarded from Washington & Jefferson College for fraud, misrepresentation, and/or other violation of Washington & Jefferson College policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including Washington & Jefferson College registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, Washington & Jefferson College may assign any other sanctions as deemed appropriate.

## **b. Employee Sanctions/Responsive Actions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*

- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of tenure track progress*
- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, Washington & Jefferson College may assign any other responsive actions as deemed appropriate.

## **SECTION VIII – APPEALS**

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within two (2) business days of the delivery of the Notice of Outcome. A single Appeal Decision-maker will hear the appeal. No Decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. The Request for Appeal will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely determination as to whether the request meets the grounds and is timely filed.

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

Appeals are limited to the following grounds:

- (A) Procedural irregularity that would change the outcome of the matter;
- (B) New evidence that would change the outcome and that was not reasonably available when the determination whether sex-based harassment occurred, or dismissal was made; and
- (C) 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 would change outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Decision-maker and the parties, and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Decision-maker will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 3 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Decision-maker to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in three (3) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and the Chair will render a decision in no more than five (5) business days, barring exigent circumstances.

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

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

#### **b. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above. If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

Washington & Jefferson College may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

### **c. Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Decision-maker(s) may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to Washington & Jefferson College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

## **SECTION IX - ADDITIONAL INFORMATION:**

### **1. Resources**

On-Campus: Free counseling resources on campus can be accessed at the Counseling Center located in New Residence Hall, Ground Level or by contacting the office during business hours at (724) 223-6107

Off Campus: Free 24/7 counseling resource off campus can be found at the STTARS Program (Sexual Trauma Treatment & Recovery Services). They are located just off campus at 75 East Maiden Street, Washington, PA. You may also contact their hotline at 1-888-480-7283. This crisis hotline is available 24 hours a day for sexual violence survivors and significant others. Trained volunteers and staff provide support and offer information on available services.

## **2. Recordkeeping**

Washington & Jefferson College will also maintain any and all records in accordance with state and federal laws.

## **3. Revision of this Policy and Procedures**

This Policy and procedures go into effect on August 1, 2024 and are not retroactive. Any complaints filed after this date for incidents which occurred before August 1, 2024, will be addresses and adjudicated using the previous Washington & Jefferson College Title IX Policy. This Title IX policy will be reviewed and updated annually by the Title IX Coordinator. Washington & Jefferson College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

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

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

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally. This Policy and procedures are effective August 1, 2024.

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Hotline: (800) 421-3481  
[OCR@ed.gov](mailto:OCR@ed.gov)

#### 4. Definitions

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Complainant* (1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part; or (2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part and who has participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.
- *Complaint (formal)* means an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part.
- *Confidential Employee* means (1) an employee of a recipient whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; (2) An employee of a recipient whom the recipient has designated as confidential under this part for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services; or (3) An employee of a postsecondary institution who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination – but the employee's confidential status is only with respect to information received while conducting the study.
- *Disciplinary sanctions* mean consequences imposed on a respondent following a determination under Title IX that the respondent violated the recipient's prohibition on sex discrimination.
- *Final Determination*: A conclusion by a preponderance of the evidence that the alleged conduct did or did not violate policy.
- *Finding*: A conclusion by a preponderance of the evidence that the conduct did or did not occur as alleged (as in a "finding of fact").

- *Grievance Process* means a method of formal resolution designated by the recipient to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- *Decision-maker* refers to those who have decision-making and sanctioning authority within the Washington & Jefferson College's Grievance process.
- *Investigator* means the person or persons charged by a Recipient with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of Washington & Jefferson College who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Peer Retaliation* means retaliation by a student against another student.
- *Pregnancy or related conditions* means (1) Pregnancy, childbirth, termination of pregnancy, or lactation; (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; (3) Recovery from pregnancy, childbirth, termination of pregnancy, or lactation or related medical conditions.
- *Recipient* means a postsecondary education program that is a recipient of federal funding.
- *Relevant Evidence* is evidence that tends to prove or disprove an issue in the complaint.
- *Relevant* means related to the allegations of sex discrimination under investigation as part of the grievance procedures under section 106.45, and if applicable 106.46. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision-maker in determining whether the alleged sex discrimination occurred.
- *Remedies* means measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient's education program or activity limited or denied by sex discrimination. These measures are provided to restore

or preserve that person's access to the recipient's education program or activity after a recipient determines that sex discrimination occurred.

- *Respondent* means a person who is alleged to have violated the recipient's prohibition on sex discrimination.
- *Resolution* means the result of a Grievance Process.
- *Retaliation* means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.
- *Sanction* means a consequence imposed by Washington & Jefferson College on a Respondent who is found to have violated this policy.
- *Sex-based harassment* prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. (1) Quid pro quo harassment (2) Hostile environment harassment (3) Specific offenses; which include; Sexual assault, dating violence, domestic violence and stalking. These terms are more specifically defined in Section II.
- *Student* means a person who has gained admission.
- *Student with a disability* means a student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3).
- *Supportive measures* means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to: (1) Restore or preserve that party's access to the recipient's education program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment, or (2) provide support during the recipient's grievance procedures or during the informal resolution process.
- *Title IX Coordinator* is one official designated by Washington & Jefferson College to ensure compliance with Title IX and the Washington & Jefferson College's Title IX program.

References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.