

# Anti-Sexual Harassment, Discrimination, and Sexual Misconduct Policy

## THE COLLEGE OF WOOSTER

### INTRODUCTION

The College of Wooster ("Wooster" or the "College") has developed a comprehensive anti-sexual harassment, discrimination, and sexual misconduct policy (the "policy") in compliance with federal laws applicable to all members of the campus community including students, faculty, administrators, staff, and visitors.

The policy prohibits all forms of illegal sex- and gender-based discrimination, sex/gender-based harassment, sexual/gender violence, sexual exploitation, domestic violence, dating violence, and stalking which are collectively referred to herein as sexual misconduct. Sexual misconduct encompasses any unwelcome behavior of a sexual or gender-based nature that is committed without consent or by force, intimidation, coercion, or manipulation. Sexual misconduct can be committed by a person of any gender, and it can occur between people of the same or different genders. Sexual misconduct may vary in its severity and consists of a range of behavior or attempted behavior. It can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship.

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of harassment, violence, and discrimination. The College of Wooster's 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 policy has been designed to serve the following purposes:

- Establish conduct standards and expectations for behavior for the campus community. In addition to compliance with applicable federal laws, this policy has been designed to reflect and maintain institutional values and community expectations which also include compliance with local ordinances and state law. A violation of College policy may also constitute a crime. Under the Ohio Revised Code (ORC), The College of Wooster is obligated to report to the Wooster Police Department when a felony may have been committed.
- Equity and clarity for process and procedure. The policy outlines reporting, investigation, and resolution of complaints in cases where there is reported sexual misconduct. The policy ensures that all parties involved are treated fairly, equitably, and respectfully through the process.
- Thorough descriptions of resources within the campus and the external community. The College of Wooster is committed to supporting any person who is impacted by violations of this policy. That includes assisting in the management of the impact that sexual misconduct may have on a person and/or other members of the campus community.

All members of The College of Wooster community have the right to:

- Make a report to local law enforcement and/or state police and be assisted by campus authorities if reporting a crime to law enforcement.
- Have disclosures of illegal discrimination and harassment, domestic violence, dating violence, stalking, and sexual misconduct treated seriously.
- Make a decision about whether or not to disclose a crime or violation and/or to participate in the College's resolution process and/or criminal justice process.
- Participate in a process that is fair and impartial and that ensures a meaningful opportunity to be heard.
- Be treated with dignity and respect and to have access to health care and counseling services as needed.

- Change academic, living, transportation, or working situations to avoid a hostile environment.
- Obtain or enforce a no contact order (issued by the College) and/or seek a restraining order (issued by the local court system).
- Have a clear description of the College's disciplinary process and know the range of possible sanctions for violating this policy.
- Receive contact information about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available both on campus and in the local community.

## **NOTICE OF NON-DISCRIMINATION**

The College of Wooster adheres to all federal, state and local civil rights laws banning discrimination in private institutions of higher education. The College of Wooster will not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of race, color, sex/gender, gender identity, gender expression, pregnancy, political affiliation, religion, creed, ethnicity, national origin (including ancestry), citizenship status, physical or mental disability of a qualified individual, age, marital status, family responsibilities, sexual orientation, veteran or military status (including special disabled veteran, Vietnam-era veteran, or recently separated veteran), predisposing genetic characteristics, domestic violence victim status, or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any complaint process on campus or within the Equal Employment Opportunity Commission or other human rights agencies.

Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that mandates: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Prohibited conduct under this policy is also prohibited under the Clery Act as amended by the Violence Against Women Act (VAWA), Title VII of the Civil Rights Act of 1964, Ohio Revised Code Chapter 4112, and other applicable statutes, regulations, and administrative code provisions.

## **SCOPE OF POLICY**

This policy applies to all reports of sexual misconduct occurring on or after the effective date of this policy. When used in this policy, "complainant" refers to the party who brings or initiates a complaint against a member of The College of Wooster community. "Respondent" refers to the party being named in a complaint as having violated this policy.

This policy applies in any instance in which a member of the Wooster community is alleged to have engaged in illegal discrimination or harassment, or to have committed sexual misconduct against another person, including visitors to the campus. The College of Wooster will not tolerate illegal discrimination, harassment or sexual misconduct against any employee, student, visitor, or guest. This policy will be enforced regardless of the complainant's or respondent's sex, gender, sexual orientation, or gender identity or expression.

This policy applies to prohibited conduct whether it occurs on-campus or off-campus under the circumstances described below, and encourages reports of sexual misconduct regardless of where the experience may have occurred. The College will respond to any report of sexual misconduct regardless of when the experience may have occurred, including semester breaks, leaves of absence, or periods of dismissal. The College's resolution process will be used as long as the respondent is under "control" at the College. ("Control" by the College refers to any employee and/or a student at the College.)

The College will take action to provide resources for the safety and well-being of the complainant and the campus community if the prohibited conduct occurred in a situation where the respondent is not under control by the College, and the College's resolution process is not applicable.

Descriptions of applicable locations:

- On-campus Programs: This policy applies if illegal discrimination or harassment, including, but not limited to sexual misconduct has been alleged to occur on property owned or controlled by the College.

- Off-campus College Programs: This policy applies if illegal discrimination or harassment, including, but not limited to sexual misconduct has been alleged to occur in the context of College employment or educational programs or activities, such as but not limited to Wooster study abroad programs, Wooster internship programs, trips/retreats organized by Wooster, etc.
- Off-campus: This policy applies if illegal discrimination or harassment, including, but not limited to sexual misconduct has been alleged to have occurred on a property not controlled by the College if there are adverse, on-going effects that create a hostile environment for any member of the Wooster community at or on College of Wooster property.

**Procedures for Incidents Involving Individuals Who are Not Current Members of the Campus Community:** In complaints of alleged violations of the Anti-Sexual Harassment, Discrimination, and Misconduct Policy by persons who are not currently members of the campus community, a report can be filed with the Office of the Dean of Students, the Title IX Coordinator, Security and Protective Services, and/or the Director of Alumni Relations, if the matter involves an alumnus. The Title IX Coordinator and a designee from Alumni Relations will meet to determine if the alleged violations affect a substantial College interest. The violation affects a substantial College interest if: it occurred on College property, it occurred on non-College property during an event associated with the College, or has significant impact or disruption on a current member of the College community. The designees will meet and determine an appropriate response, including, but not limited to:

- Citation or written warning
- Restitution: in complaints involving vandalism or property damage
- Exclusion from College property and/or events associated with the College
- Referral to appropriate law enforcement agency(ies)

**Procedures for Incidents Involving Admitted Students:** In some cases, the College may choose to investigate an allegation of policy violation(s) depending on the nature of the report. The College reserves the right to rescind admission without an investigation prior to the first day of classes.

**Procedures for Incidents Involving the Title IX Coordinator:** Complaints against the Title IX Coordinator should be directed to the President of the College. In the event of a complaint against the Title IX Coordinator or someone to whom they report, alternative arrangements will be made to ensure an impartial investigation and adjudication. The alternative arrangements will be provided in writing to all parties.

## **PROHIBITED CONDUCT**

The College prohibits all forms of sex and gender-based discrimination, harassment, sexual/gender-based violence, sexual exploitation, stalking, hazing, intimate partner violence (including domestic violence and dating violence), bullying/cyberbullying, and the use of physical harm/intimidation.

### **Discrimination**

This policy prohibits nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the campus community who acts to deny, deprive, or limit the educational, employment, residential and/or social access, benefits and/or opportunities of any member of the campus community, guest, or visitor on the basis of their actual or perceived membership in any of the protected classes listed above is in violation of the College policy on nondiscrimination. When brought to the attention of the College, any such discrimination will be appropriately addressed and remedied by the College according to the process described below. Non-members of the campus community who engage in discriminatory actions within College programs or on College property are not under the jurisdiction of this policy, but can be subject to actions that limit their access and/or involvement with College programs as the result of their misconduct. Separation by sex and/or gender identity is allowed in certain circumstances, including, but not limited to: housing, locker rooms, bathrooms, choirs or choruses, and fraternities and sororities.

### **Harassment based upon Sex and/or Gender**

Harassment constitutes a form of discrimination that is prohibited by College policy as well as the law. The College of Wooster condemns and will not tolerate discriminatory harassment against any employee, student, visitor, or guest on the basis of any status protected by policy or law. The College will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, the College may also impose sanctions on the harasser through application of the process described below. The College's harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

A hostile environment may be created by harassing verbal, written, graphic, or physical conduct that is severe or persistent/pervasive, and objectively offensive such that it interferes with, limits, or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits, or opportunities.

The College reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature not on the basis of a protected status. Addressing such behaviors may or may not result in the imposition of discipline under College policy, but may still be addressed through supervisory conversations, remedial actions, education, and/or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, employees should contact the Director of Human Resources and students should contact the Director of Student Rights and Responsibilities.

### **Sexual Harassment**

Sexual harassment is any unwelcome sexual advance, request for sexual favors, or other unwanted verbal or physical conduct of a sexual nature when one or more of the following conditions are present:

- Submission to or rejection of such conduct is an explicit or implicit condition of an individual's employment, evaluation of academic work, or any aspect of a College program or activity; or
- Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; or,
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently severe, pervasive, or persistent and objectively offensive as to create an intimidating, hostile, demeaning, or sexually offensive working, academic, residential, or social environment under both an objective and subjective standard.

Sexual harassment also includes harassment based on gender, sexual orientation, gender identity, or gender expression, that may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on gender or gender-stereotyping, even if the acts do not involve conduct of a sexual nature.

A single experience of sexual harassment alone may create a hostile environment if the experience is sufficiently severe. The more severe the conduct, the less need there is to show a pattern of experiences to create a hostile environment. The determination of whether an environment is "hostile" will be based on the totality of the circumstances, including, but not limited to:

- The frequency of the speech or conduct;
- The nature and severity of the speech or conduct;
- Whether the speech or conduct was physically threatening;
- Whether the speech or conduct was demeaning;
- The effect of the speech or conduct on the complainant's mental and/or emotional state;
- Whether the speech or conduct was directed at more than one person;
- Whether the speech or conduct arose in the context of other discriminatory conduct.

### **Non-Consensual Sexual Intercourse**

Defined as:

- any sexual penetration or intercourse (anal, oral, or vaginal);
- however slight;
- with any object;
- by a person upon another person;
- that is without consent and/or by force.

Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger, or object, or oral copulation by mouth-to-genital contact or genital-to-mouth contact.

The Ohio Revised Code (ORC) defines sexual conduct as, “vaginal intercourse between a male and a female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another.” This definition is applicable to criminal prosecutions for sexual conduct (including rape, sexual battery, and unlawful sexual conduct with a minor) in Ohio, but may differ from the definition used by The College of Wooster to address policy violations.

### **Non-Consensual Sexual Contact**

Defined as:

- any intentional sexual touching;
- however slight;
- with any object;
- by a person upon another person;
- that is without consent and/or by force.

Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

### **Sexual Exploitation**

Sexual exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another person or persons. Examples of sexual exploitation include, but are not limited to:

- Taking advantage of another’s sexuality; threatening to disclose an individual’s sexual orientation or gender;
- Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give or deny consent to sexual activity;
- Extending the bounds of consensual sexual contact without the knowledge of the other individual, e.g. knowingly failing to use contraception without the other party’s knowledge;
- Sexual voyeurism (such as watching a person undressing, using the bathroom, or engaging in sexual acts without the consent of the person observed);
- Taking pictures of or video or audio recording another in a sexual act, or in any other private activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (including, but not limited to, allowing another person to hide in a closet and observe sexual activity or disseminating sexual pictures or video without the consent of all involved individuals);
- Prostitution: defined as the exchange of sexual acts for money, drugs, or other compensation or the facilitation of prostitution of another individual;
- Observing another individual’s nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted infection (STI) and without informing the other person of the infection;
- Encouraging or permitting another person to engage in non-consensual sexual activity.

## **Indecent Exposure**

A person commits indecent exposure if that person exposes their genitals in a sexually explicit manner in any public place or in any place where there are other persons present under circumstances in which one knows or reasonably should know that this conduct is likely to offend or alarm others.

## **Stalking**

Stalking is defined as repetitive and menacing pursuit, following, harassing and/or interfering with the peace and/or safety of another.

Cyber-stalking is a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used. Cyber-stalking is considered stalking under this policy if it meets the conditions above.

## **Hazing**

### Hazing Defined by The College of Wooster

Any activity, whether or not the act is voluntarily agreed upon, created through a new member process or in conjunction with membership with a student club/organization, sports team, other group on campus, or new employment, that causes or creates a substantial risk of mental or physical harm, embarrassment, or harassment is prohibited, regardless of the intent or end result of the activity. The College will investigate hazing allegations whether they are reported to have occurred on campus or off-campus. The College will consider an activity to be hazing if the behavior exhibits and/or includes force, coercion, or restrictions on freedom of movement, speech, or the management of daily needs.

Every member of the campus community is required to report any incidents of hazing or suspicions of hazing that come to their attention. Reports may be filed with Security and Protective Services, the Director of Student Rights and Responsibilities, the Dean of Students Office, or the Director of Student Activities and Lowry Center.

Such acts of hazing may include, but are not limited to: forced or coerced use of alcohol or other drugs; creation of excessive fatigue; requiring new members to perform personal service to current members or their partners/friends; requiring new members to call current members, or their partners/friends, by a specific name or nickname or speak a specific phrase when addressing them; physical and psychological acts that embarrass or cause undue stress; restricted movement or assigned to stay in a space for extended period of time; wearing of public apparel or costumes that would not normally be worn; restriction or monitoring of individual member actions; engaging in public stunts; degrading or humiliating games and activities; missions, treasure hunts/scavenger hunts, "kidnapping" or any other activities which are not consistent with the educational mission of the College, or the regulations and policies of the College.

Hazing that is considered to be gender-based or to have a sexual component may be considered a violation of the Anti-Sexual Harassment, Discrimination, and Sexual Misconduct Policy. Bullying that is not gender-based and does not have a sexual component is still prohibited.

### Hazing Defined by the State of Ohio

#### 2903.31 Hazing:

As used in this section, "hazing" means doing any act or coercing another, including the victim, to do any act of initiation into any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person.

No person shall recklessly participate in the hazing of another.

No administrator, employee, or faculty member of any primary, secondary, or post-secondary school or of any other educational institution, public or private, shall recklessly permit the hazing of any person.

#### 2307.44 Hazing Civil Liability

Any person who is subjected to hazing, as defined in division (A) of section [2903.31](#) of the Revised Code, may commence a civil action for injury or damages, including mental and physical pain and suffering, that result from the hazing. The action may be brought against any participants in the hazing, any organization whose local or national directors, trustees, or officers authorized, requested, commanded, or tolerated the hazing, and any local or national director, trustee, or officer of the organization who authorized, requested, commanded, or tolerated the hazing. If the hazing involves students in a primary, secondary, or post-secondary school, university, college, or any other educational institution, an action may also be brought against any administrator, employee, or faculty member of the school, university, college, or other educational institution who knew or reasonably should have known of the hazing and who did not make reasonable attempts to prevent it and against the school, university, college, or other educational institution. If an administrator, employee, or faculty member is found liable in a civil action for hazing, then notwithstanding Chapter 2743. of the Revised Code, the school, university, college, or other educational institution that employed the administrator, employee, or faculty member may also be held liable.

The negligence or consent of the plaintiff or any assumption of the risk by the plaintiff is not a defense to an action brought pursuant to this section. In an action against a school, university, college, or other educational institution, it is an affirmative defense that the school, university, college, or other institution was actively enforcing a policy against hazing at the time the cause of action arose.

#### **Intimate Partner Violence**

Intimate partner violence is any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, or domestic relationship, or other intimate encounters. Intimate partner violence may take the form of threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner, or to the family members or friends of the sexual or romantic partner. Intimate partner violence affects individuals of all genders, gender identities, gender expressions, and sexual orientation and all racial, social, and economic backgrounds. Dating violence and domestic violence are both forms of intimate partner violence.

#### **Bullying/Cyberbullying**

Repeated and/or severe aggressive behavior likely to intimidate, threaten, or intentionally hurt, control, or diminish another person, physically or mentally is considered to be bullying whether done in person or through electronic means. Bullying that is considered to be gender-based or to have a sexual component may be considered a violation of the Anti-Sexual Harassment, Discrimination, and Sexual Misconduct Policy. Bullying that is not gender-based and does not have a sexual component is still prohibited.

#### **Physical Harm and/or Intimidation**

Physical harm and/or intimidation is a purposeful action meant to hurt another person. Examples include, but are not limited to, kicking, punching, hitting with or throwing an object, or biting; threatening physical harm; written or verbal abuse; other conduct that threatens or endangers the health or safety of any person; or implied threats or acts that cause a reasonable fear of harm in another. When these acts occur in the context of intimate partner violence, or when the behavior is perpetrated on the basis of sex or gender, the conduct will be resolved under this policy. Physical harm or intimidation that is not within the context of intimate partner violence or is not based on sex or gender is still prohibited.

#### **CONSENSUAL RELATIONSHIPS**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student or supervisor and employee). Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party create real or perceived impropriety and may be unethical. These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this policy, as consent within any sexual or intimate relationship may be withdrawn at any time. For these reasons, dating, romantic, or sexual relationships between students and faculty or students and coaches, including relationships that occur when the

College is not in session or students are on leave, are prohibited. Faculty and coaches who violate this prohibition are subject to appropriate College adjudication processes and disciplinary action.

For the personal protection of members of the community, relationships in which power differentials are inherent (department chair-faculty, faculty-staff, staff-staff, staff-student, Resident Assistant, and students over whom they have direct responsibility) are generally discouraged. However, if a relationship does exist, individuals with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor. It will likely be necessary to remove the employee from the supervisory or evaluative responsibilities or to shift a party out of being supervised or evaluated by someone with whom they have established a consensual relationship. While only faculty-student and coach-student relationships are prohibited by this policy, failure to self-report all other such relationships to a supervisor as required can result in disciplinary action for an employee.

## **RELATED CONCEPTS AND DEFINITIONS**

### **Consent**

Individuals who choose to engage in sexual activity of any type with another person must first obtain clear consent from that person. Consent is clear, knowing, and voluntary permission. It can only be given by someone who is of legal age and has the capacity to consent.

Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. Consent is active, not passive. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

The following are essential elements of Consent:

- Informed and reciprocal: All parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.
- Freely and actively given: consent cannot be obtained through the use of force, coercion, threats, intimidation, pressuring, or by taking advantage of the incapacitation of another individual. Coercion, force, or threat of either invalidates consent.

Consent to one form of sexual activity does not constitute consent to engage in all forms of sexual activity. Each participant in a sexual encounter is expected to obtain and give consent to each act of sexual activity in order for the activity to be considered consensual. A current or previous dating relationship is not sufficient to constitute consent.

Consent is not indefinite. Consent may be given initially, but it may be withdrawn by any party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. An individual who seeks to withdraw consent must communicate, through clear words or actions, a decision to cease the sexual activity. Once consent is withdrawn or can no longer be given, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.

Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. While consent can be given by words or actions, non-verbal consent is more ambiguous than explicitly stating one's wants and limitations. Relying on non-verbal communication can lead to misunderstandings. Consent may not be inferred from silence, passivity, lack of resistance, or lack of an active response alone. A person who does not physically resist or verbally refuse sexual activity should not be assumed to be consenting to sexual activity.

- When consent is requested verbally, absence of any explicit verbal response, or presence of a clear non-verbal response, constitutes lack of consent. A verbal "no" constitutes lack of consent, even if it sounds insincere or indecisive. Under this policy, "no" always means "no." "Yes" only means "yes" when it is clear, voluntary, and knowingly given by an individual who has the capacity to give consent.

- If at any time during the sexual activity, any confusion or ambiguity arises as to the willingness of the other individual(s) to proceed, all parties should stop and clarify, verbally, the other's willingness to continue before proceeding with such activity.

### **Coercion**

The act of knowingly or willingly using unreasonable and persistent pressure to compel a person to initiate or continue sexual activity against their will is coercion. Coercion is generally non-physical and can include a wide range of behaviors, including threat of physical or emotional harm to the individual, the individual's friends or family, or significant threat to the individual's property, abuse of power relationships, intimidation, manipulation, threats, and blackmail. Coercion may be emotional, intellectual, psychological, or moral.

### **Force**

Force is the use or threat of physical violence or intimidation to overcome an individual's freedom to choose whether or not they will participate in sexual activity.

### **Incapacitation**

A person that lacks the ability to make informed, rational judgements and cannot consent to sexual activity is incapacitated. Incapacity can occur for many reasons, including when an individual is asleep or unconscious. Where alcohol and drugs are involved, incapacitation is beyond a state of intoxication. If the person cannot understand the "who, what, when, where, why, or how" of sexual interaction, they are incapacitated. An individual who engages in sexual activity when the individual knows, or should have known, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the other party.

### **TITLE IX COORDINATOR AND DEPUTY TITLE IX COORDINATOR(S)**

The Title IX Administrators will be informed of all non-confidential reports of prohibited conduct under this policy, and will oversee the College's centralized review, investigation, and resolution of those reports to ensure the College's compliance with Title IX and the effective implementation of this policy. All references to actions by the Title IX Coordinator may be performed by the Title IX Coordinator or Deputy Title IX Coordinator.

The Title IX administrators are:

- Knowledgeable and trained in College policies and procedures and relevant state and federal laws;
- Available to advise any individual, including a complainant or a respondent, about the courses of action, formal or informal, available at the College and in the community;
- Available to provide assistance to any College employee regarding how to respond appropriately to a report of prohibited conduct;
- Responsible for monitoring full compliance with all procedural requirements, record keeping, and timeframes outlined in this policy;
- Responsible for overseeing training, prevention, and education efforts and annual reviews of climate and culture; and,
- Responsible for facilitating periodic review of this policy as needed to maintain compliance with state and federal law.

The Title IX Coordinator is the individual responsible for the coordination and administration of Wooster's non-discrimination and harassment policies. The Title IX Coordinator monitors overall compliance with Title IX, ensures appropriate action is taken to eliminate prohibited conduct, prevent its recurrence, and remedy its effects. The Title IX Coordinator is available to provide information regarding policies, process, procedure, and support resources.

The Deputy Coordinator ensures appropriate training and education for the campus community and oversees the College's investigation, response, and resolution of reports made under the College's policy. The Deputy Title IX Coordinator is available to provide information regarding policies, process, procedure, and support resources.

The Title IX administrators are:

- Lori Makin-Byrd, Title IX Coordinator; Director of Sexual Violence Prevention and Response; lmakin-byrd@wooster.edu; Longbrake Wellness; (330) 263-2017
- Jess Ettell Irvine, Director of Student Rights and Responsibilities; Deputy Title IX Coordinator; jettell@wooster.edu; Office of Campus Life, Lowry Center; (330) 263-2501

## **RESOURCES AND REPORTING**

College of Wooster officials, depending on their roles at the College, have varying reporting responsibilities and abilities to maintain confidentiality. In order to make informed choices, one should be aware of confidentiality and responsible reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality, offering options and support without any obligation to inform an outside agency or individual unless a complainant has requested information be shared (legal limits on confidentiality, including, but not limited to, situations in which there is a report of child abuse or direct threat of harm to self or others, still apply).

At the time a report is made, a complainant does not have to decide whether or not to request any particular course of action, nor does a complainant need to know how to identify what happened. The College provides support that can assist a complainant in making these important decisions. To the extent possible, the College will respect a complainant's autonomy in deciding how/if they wish to proceed. When a threat of harm exists to the complainant or to other members of the campus community, the College may have to proceed with actions in spite of the complainant's request.

The College's policy, definitions, and burden of proof may differ from Ohio criminal law. A complainant may seek resolution through the College's resolution process, may pursue criminal action, may choose one but not the other, may pursue neither process, or may choose both options. Neither law enforcement's determination whether or not to prosecute a respondent nor the outcome of any criminal prosecution are determinative of whether prohibited conduct has occurred under this policy. Proceedings under this policy may be carried out prior to, concurrent with, or (in rare cases) subsequent to, civil or criminal proceedings off campus.

### **Reporting to Local Law Enforcement**

A Title IX administrator or representative of Security and Protective Services will assist a complainant, at the complainant's request, in contacting local law enforcement and will coordinate with law enforcement agencies if a complainant decides to pursue the criminal process. A complainant has the right to notify, or decline to notify, law enforcement, under VAWA. Felonies reported to the College, except to confidential resources, must be reported to law enforcement by the College, as required by Ohio law (Ohio Revised Code 2921.22). The complainant may decline to participate in a law enforcement investigation.

### **Campus Reporting Options**

#### **Title IX Administrators**

To enable the College to respond to all reports in a prompt and equitable manner, the College encourages all students to report violations of this policy directly to the Title IX Coordinator or Deputy Title IX Coordinator. Employees are encouraged to report directly to the Title IX Coordinator. However, the College recognizes that a student or employee may choose to report to any trusted employee of the College. All College employees, except those who are designated as confidential resources, are considered "responsible employees" under Title IX and are required to share all known information related to a report, including the identities of the parties with the Title IX Coordinator.

Student employees/volunteers who have responsibility for the welfare of other students, including Resident Assistants, are required to report all known information. Other student employees who receive information within the context of their employment are required to report to the Title IX Coordinator.

Reports should be made to:

- Lori Makin-Byrd, Title IX Coordinator; Director of Sexual Violence Prevention and Response; lmakin-byrd@wooster.edu; Longbrake Wellness; (330) 263-2017
- Jess Ettell Irvine, Director of Student Rights and Responsibilities; Deputy Title IX Coordinator; jettell@wooster.edu; Office of Campus Life, Lowry Center; (330) 263-2501

### **Security and Protective Services**

The Security and Protective Services Department provides law enforcement response, crime prevention education, and security services to the campus community. The department also works closely with the Wooster Police Department, Wooster Fire Department, and other College offices to provide such services and resources to the Wooster community.

Reports can also be made directly to Security and Protective Services, 24 hours a day, 7 days a week:

- Security and Protective Services; Culbertson/Slater complex, 602 East Wayne Avenue; (330) 263-2590

### **Confidential Reporting On-Campus**

If a reporting party would like the details of an experience to be kept anonymous (no personally identifiable information to be shared), the reporting party may speak with a “confidential employee.” A “confidential employee” is a licensed medical, clinical, or mental health professional, or ordained clergy member fulfilling their role under that licensure or ordination. A “confidential employee” will not disclose a report to the College unless there is written consent to do so from the patient/client, there is the risk of imminent threat of harm to self or others, or there is reasonable suspicion of abuse of a minor (someone under the age of 18, or under the age of 21 with a developmental disability or physical impairment).

All employees in the Longbrake Student Wellness Center (with the exception of the Title IX Coordinator) as well as the College’s chaplain are “confidential employees.”

### **Off-Campus**

A person may also speak with off-campus resources such as: off-campus local rape crisis counselors; intimate partner violence resources; local or state assistance agencies; or on- or off-campus members of the clergy.

Consistent with the Clery Act, any data collected from “confidential employees” about the disclosures of prohibited conduct will be done in an aggregate manner and in a way that does not reveal personally identifying information about the reporting party to include in annual crime statistics, address any systemic concerns, and/or inform training and educational programs.

### **Online Reporting Form**

Any individual may also report using the College’s online reporting form (available at <http://wooster.edu/offices/titleix/>). A report can be made without disclosing one’s own name, identifying the responding party, or requesting any action. Depending on the level of information provided about the experience or the individuals involved, anonymous reporting may limit the College’s ability to respond or take further action. As with all other reports, anonymous reports will be shared with the Title IX Coordinator. Where there is sufficient information, the College will ensure that anonymous reports are reviewed and included for compliance with the Clery Act.

Employees who have a duty to report information to the Title IX Coordinator may not make such reports anonymously.

### **INTERIM MEASURES AND SUPPORT**

The College of Wooster will implement initial remedial and responsive and/or protective actions upon notice of reported harassment, retaliation, and/or discrimination whether or not charges are initiated through the College’s conduct system and/or the state criminal system. Persons who make a complaint (complainants) and those against whom a complaint is filed (respondents) have the same remedial actions available to them when appropriate.

The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. The College will consider a number of factors in determining what interim measures to take, including, for example, the specific need expressed by the complainant; the age of the individuals involved; the severity or pervasiveness of the allegations; any continuing effects on the complainant; whether the complainant and alleged respondent share the same residence hall, class, transportation, office space, or job location; and whether other conduct measures have been taken to protect the complainant (e.g., civil protection orders). In general, when taking interim measures, the College will minimize the burden on the complainant.

Such actions could include but are not limited to: no contact orders, counseling and/or medical services, academic support, living arrangement adjustments, a campus escort, academic or work schedule and assignment accommodations, safety planning, and/or referral to campus and community support resources. The College of Wooster will take additional, prompt, remedial, and/or disciplinary action with respect to any member of the community, guest, or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. Deliberately false and/or malicious accusations of harassment, as opposed to grievances which, even if erroneous, are made in good faith, are just as serious an offense as harassment and will be subject to appropriate disciplinary action.

During an investigation and until resolution of the matter, the Vice President for Student Affairs/Dean of Students, or designee, may impose an interim suspension in consultation with the Title IX Coordinator. This interim suspension may be from all or any portion of College premises, College related activities, and/or student organization activities. This will occur when the Vice President for Student Affairs/Dean of Students, or designee, has reasonable cause to believe that an individual, group of students, or a student organization, and their presence on College property or at College-related events poses a risk of harm or disruption to the safety and/or security of others, to property, and/or the orderly functions of the College. This temporary suspension will be confirmed by a written statement and shall remain in effect until the conclusion of an investigation and conduct process.

Students that are removed from campus may, within three business days of the suspension, petition the Vice President for Student Affairs/Dean of Students for reinstatement. The petition must be in writing, and must include supporting documentation or evidence that the student does not pose, or no longer poses, a risk of harm and/or disruption to others, or to property. A decision on such petition will be made by the Vice President for Student Affairs/Dean of Students or designee,

Similarly, the College may impose leave for any employee at the discretion of the Associate Vice President of Human Resources (staff) and/or the Provost (faculty) in consultation with the Title IX Coordinator. Such leave will be structured at the College's discretion. The College will collaborate with the appropriate department or division head in structuring the leave.

## **PRELIMINARY INFORMATION**

### **Timing of Complaints**

All complainants are strongly encouraged to report sexual misconduct in a timely manner in order to maximize resources and support and to begin the investigation process efficiently to provide a thorough, impartial, and reliable investigation. If the respondent is a current College of Wooster student or employee, there is no time limit for filing a complaint to initiate the process. If a respondent is approaching graduation, the College reserves the right to withhold that student's College of Wooster degree pending the conclusion of the resolution process.

### **Filing a Criminal Complaint**

The College of Wooster strongly recommends that all complainants who have experienced a criminal offense report to local law enforcement agencies. The College will not require an individual to speak with law enforcement officials. The filing and process for addressing sexual misconduct outside of the College's resolution process is a separate entity from the College. The College will not wait for a conclusion from local law enforcement for any criminal investigation or impending court proceedings. Law enforcement's determination of whether or not to initiate prosecution will hold no weight on the College's decision to charge a respondent through the College conduct process if it is believed that a violation of the College's sexual misconduct policy may have occurred.

Should either party wish to cooperate with local law enforcement in a criminal investigation pertaining to a matter of sexual misconduct, they may do so under the guidance of the appropriate legal authority(ies) without fear of penalty by The College of Wooster for violating a no contact order issued by the College.

### **Effect of a Complaint on the Respondent**

If a respondent is a current student, no notation will be placed on the respondent's personnel record of a complaint of pending disciplinary action prior to the conclusion of the resolution process. If a respondent chooses to withdraw from the College prior to the completion of the resolution process, a notation will be made in the student's personnel record that a withdrawal occurred with pending investigation and/or with a pending disciplinary action.

### **Amnesty for Minor Policy Violations**

The College community encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, reporting parties or witnesses are hesitant to report to College officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that reporting parties choose to report to College officials, and that witnesses come forward to share what they know. To encourage reporting, the College pursues a policy of offering reporting parties and witnesses amnesty from minor policy violations related to the incident. The use of alcohol or other drugs does not justify sexual misconduct, and a person who was incapacitated due to the use of alcohol or other drugs cannot consent to sexual activity.

**Students:** Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might be hesitant to help take a sexual misconduct victim to Security and Protective Services). The College pursues a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, the College will provide educational options, rather than punishment, to those who offer their assistance to others in need. The full policy is posted online: <http://wooster.edu/students/get-help/medical-assistance/>.

**Employees:** Sometimes, employees are also hesitant to report harassment or discrimination they have experienced for fear that they may get themselves in trouble. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might be hesitant to report the incident to College officials. The institution may, at its discretion, offer employee reporting parties amnesty from some policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to witnesses on a case-by-case basis.

### **Advisors/Support Persons**

A complainant or a respondent has the right to an advisor/support person of their choice. A complainant or respondent may select one advisor/support person of their choice (College provided or personal selection) to accompany them to meetings addressing the complaint. In order to protect the privacy of all parties involved, multiple advisors/support persons are not permitted.

Attorneys are permitted to act as advisors if the party chooses, at the party's own expense. The College does not provide or pay for attorneys as advisors. All advisors are subject to the same campus rules, whether they are attorneys or not. When an advisor is chosen, they will be provided a copy of the rules to review and sign. The advisor's role in any meeting or hearing is limited to privately conferring with or writing notes to the complainant or respondent, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. The advisor may not submit material or speak on behalf of the party and may not address any other participant or the hearing panel. A witness may not serve as an advisor/support person.

Advisors are expected to refrain from interferences with the investigation and resolution. Any advisor who steps out of their role will be warned once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting or hearing, that meeting will typically continue without the advisor present. Subsequently, the Title IX Coordinator will determine whether the advisor may be reinstated or may be replaced by a different advisor.

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

As a component of investigations and hearing cases, access to documentation may be necessary. The College provides a consent form that authorizes such access. The parties and all individuals protected by FERPA whose personally identifiable information is contained in the documents must complete this form before the College is able to share records with an advisor. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations.

The College expects an advisor to adjust their schedule to allow them to attend College meetings when scheduled. The College does not typically change scheduled meetings to accommodate an advisor's inability to attend. The College will, however, make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video, and/or virtual meeting as may be convenient and available.

### **PARTICIPATION BY REPORTING PARTY, RESPONDING PARTY, AND/OR WITNESSES**

Any party involved in a sexual misconduct complaint has the right to decline participation in the investigation or complaint process. It is important to note that the College may continue with an investigation without the complainant's and/or respondent's participation. Lack of participation may result in an outcome that precludes a complainant or respondent from appealing the outcomes of the process. As appropriate, the Vice President/Dean of Students (or designee), the Associate Vice President for Human Resources (or designee), or the Provost (or designee) will make this determination.

### **RETALIATION**

Retaliation is words or actions taken in response to reporting of a policy violation or participation in the College's complaint process or the follow up to a complaint. Retaliation will be a violation of this policy when it is sufficiently serious (e.g., severe and/or pervasive) to discourage a reasonable person from accessing their rights under this policy. The protection against retaliation applies to both parties and to all witnesses. All persons who believe they have been subjected to retaliation under this policy are encouraged and entitled to seek support, utilize available resources, and come forward with their concern or complaint.

Behavior that may be considered retaliatory includes but is not limited to:

- Discouraging an individual from reporting an incident;
- Discouraging witness participation;
- Threatening or intimidating a participant in a complaint, investigation, and/or hearing;
- Intentionally causing negative consequences for a participant in a complaint, investigation, and/or hearing

### **REQUEST FOR ANONYMITY WHEN REPORTING SEXUAL MISCONDUCT**

A complainant may desire to report sexual misconduct to the College, but wish to maintain anonymity. In these cases, the Title IX administrators will evaluate and review this request. The Title IX administrators will review the allegations, keeping in mind the necessary balance of the complainant's request while also recognizing the College's obligation to provide a safe environment for the Wooster community. Circumstances that will be considered include, but are not limited to: seriousness of the conduct, the roles of the complainant and respondent at the College, the presence of violence and/or weapons, and if other complaints or reports have been made against the respondent.

The College will take all reasonable steps to investigate and respond to allegations of sexual misconduct, but may be limited if a complainant requests anonymity, and it is granted. In cases where anonymity cannot be granted, the complainant will be notified in writing of the chosen course of action, and they will be given the option to opt out of participating in the process.

### **CONFIDENTIALITY AND PRIVACY REGARDING REPORTS OF SEXUAL MISCONDUCT**

**Privacy** generally means that information related to a report of sexual misconduct will only be shared with those College

employees and external investigators, if applicable, who “need to know” in order to assist in the active review, investigation, or resolution of the report, including the issuance of interim measures. The College will determine which employees have a legitimate need to know about individual complaints pursuant to the Family Educational Rights and Privacy Act (FERPA).

**Confidentiality** means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without express permission of the individual or as otherwise permitted or required by law. These designated professionals have the right to maintain privileged conversations under state law. Confidential resources include licensed medical professionals, mental health professionals, and ordained clergy.

There are limits to confidentiality and they include:

### **Mandatory Reporting of Child Abuse**

All Wooster employees, including confidential resources, are required to immediately report any knowledge or reasonable suspicion that a minor (someone under 18 years old or under the age of 21 with a developmental disability or physical impairment) is experiencing abuse or neglect based on information shared by the minor, any other individual, or one's own observations or knowledge. Any Wooster employee suspecting abuse or neglect is required to bring all suspicions to the immediate attention of the Director of Security and Protective Services and the Title IX Coordinator. Wooster community members who are not employees are strongly encouraged to report any knowledge or reasonable suspicion of child abuse to the Director of Security and Protective Services or to law enforcement. In addition to notifying the Title IX Coordinator and the Director of Security and Protective Services, College employees must make a direct report to the Wayne County Children's Services Child Abuse Hotline at Report Abuse: 330-345-5340 / 1-855-642-4453 (855-O-H-CHILD).

### **Ohio Felony Reporting Requirement**

Under Ohio law, most individuals must report felonies, including sexual violence. This legal requirement means that the Title IX Coordinator or Security and Protective Services must report knowledge of any felony to the Wayne County Sheriff's Department. Where the College makes a report to law enforcement under this section, the College will communicate with the complainant what information and when the information was reported to law enforcement. To the extent reasonably possible, the College will communicate with the complainant in advance of any report to law enforcement. The complainant may choose whether and how to participate in any subsequent criminal investigation if one results.

### **Ohio Medical Professional Reporting Requirements**

In Ohio, medical professionals have distinct legally mandated reporting responsibilities. Where a medical professional knows or has reasonable cause to believe that serious physical harm resulted from an offense of violence, the medical professional is required to make a report to law enforcement. Medical professionals must deem a patient medically stable before reporting and must communicate to the patient that the patient does not have to report and/or speak to the police. If the patient chooses not to speak to police at the time of the medical examination, the medical professional does not need to report the patient's name - only the date, general time, and general location of the experience.

### **Risk of Harm to Self or Others**

Mental health professionals are required to disclose information where there is an imminent threat of the client harming themselves or others.

## **DISCLOSURE MANDATES**

### **Clery Act Reporting**

All higher education institutions that receive federal funding, including the College, are obligated to issue publicly an Annual Security Report (“ASR”) which identifies the number of federally specified crimes on campus, on College property, or adjacent to campus. The ASR does not include identifying information about the persons involved in such incidents. The report provides anonymous statistical information for certain offenses that have been reported at campus locations.

### **Timely Warnings**

A “timely warning” is a campus-wide notification to alert the campus community of a serious or continuing threat on campus.

A timely warning issued in response to a report of sexual misconduct does not include identifying information about the complainant. However, it may include identifying information about a respondent if appropriate.

## **FILING A COMPLAINT**

### **Individual**

Any person who believes they have been subjected to conduct that is in violation of the sexual misconduct policy by a member of the College community has the right to file a complaint against that person.

A person who has not been harmed, but has information about an allegation of sexual misconduct may also file a report. A person who makes such a report will be referred to as "the reporter".

### **Relevance of Information**

A complainant's or respondent's prior or subsequent sexual activity is typically not relevant to the complaint. There may be limited exception made in regard to the sexual history between the parties. Additionally, previous good faith allegations and/or findings will be considered as potential evidence of pattern and/or predatory conduct..

"Character statements" will not be accepted for either party during a resolution or adjudication process. Only information that is relevant to the complaint being investigated will be considered.

## **PRIVACY AND ACCESS TO RECORDS**

All parties involved in a hearing are required to keep private all information learned in preparation for the hearing and at the hearing. Consistent with the Family Educational Rights and Privacy Act (FERPA) regulations, the parties, panel members, advisers, and external decision-makers may not share any copies of documents. All copies of documents provided must be returned to the College at the conclusion of the hearing and any appeals, and parties must certify that they have not kept a hard copy or electronic copy. Any violation of this obligation is subject to disciplinary action by the College. (The complainant and the respondent may retain a copy of the investigator's report.)

This section does not prohibit the complainant or the respondent from disclosing or discussing the complaint and/or the outcome of the resolution process.

## **RECORD RETENTION**

The College will retain all records relating to a report of prohibited conduct for a period of seven years (7) after the date the report was received. The College will retain all such records indefinitely in cases in which the respondent was found to have violated the Policy and was expelled. All recorded reports of sexual misconduct will be stored by the Title IX Coordinator in a locked, secure location and/or in a secure digital database. Records related to student conduct, hearings and/or sanctions will be stored in the Office of Student Rights and Responsibilities in a locked, secure location and/or in a secure digital database.

## **TIMELINE OF THE SEXUAL MISCONDUCT PROCESS**

It is a goal to resolve complaints under the policy within 60 business days from notice of report. The timeframe will exclude the days that classes are not in session. The timeframe will vary depending on complexity of the case, availability of witnesses, and certain times of the academic year. The College may extend an investigation process for reasonable circumstances and will provide this information to the complainant and respondent in writing. The 60-day window will not include appeals that may be filed.

## **INVESTIGATIONS**

Investigations may take at least 21 business days to complete. During the investigation, both parties have the opportunity to present witnesses and other evidence. Witnesses should not be presented if they are only "character" witnesses. A witness must have relevant information pertaining to the allegations.

The investigation process does not allow for a party to have a full list of witnesses that are being interviewed as part of the investigation. Both parties and witnesses should provide all information to the investigator and Title IX administrators during

their meetings. A witness may be brought forward at any time by either party or requested by the investigator through information disclosed in interviews.

During an investigation and until resolution has been determined, actions may be issued as deemed appropriate for the safety and well-being of the parties involved and the campus community. These may include a no contact order, parameters to set access to campus facilities for both parties, and/or removal from or reassignment of residential or employment space. In cases where allegations are severe or egregious, the Vice President for Student Affairs/Dean of Students, or their designee, or Associate Vice President for Human Resources, or their designee, or the Provost, or their designee, may impose an interim suspension.

### **Intake Meeting**

A Title IX administrator will conduct an intake meeting with the complainant and respondent separately. As is appropriate, the intake meeting may also include other employees, specifically the Deputy Title IX Coordinator, a representative from the Provost's office, and/or a representative from Human Resources. The complainant and respondent may request to meet solely with the Title IX Administrator.

The intake meeting with the complainant will:

- Discuss immediate concerns for physical safety and emotional well-being.
- Notify complainant of their option (and right to decline) to file a report with local law enforcement agencies, seek medical treatment off-campus, and the importance of preserving evidence, as is applicable to the reported incident. The Title IX administrator will provide resources if a complainant wants assistance contacting any of these agencies.
- Provide information for confidential and private reporting options on-campus and off-campus.
- Issue information about resources, interim measures, and remedies both on-campus and off-campus including, but not limited to, counseling services, victim advocacy, housing accommodations, academic support, no contact orders, campus safety escorts, work situations, and transportation, regardless of whether a formal report is made to the College or local law enforcement.
- Provide an overview of the procedure, process, and options for resolution.
- Explain the right to an advisor of choice/support person. A list of trained College advisors will also be reviewed.
- Discuss if there is pattern evidence or other similar conduct by the respondent (if known at the time of intake).
- If anonymity is requested by the complainant, the conditions and limits of anonymity are discussed, as well as whether anonymity is appropriate for the reported incident.
- Explain the applicability of the College's amnesty policy.
- Explain retaliation and the prohibition of it.
- Discuss the Clery Act and Ohio Revised Code obligations. Complainant's personally identifiable information will never be shared with the campus community and/or with local law enforcement unless requested.

This information will also be provided in writing.

The Title IX administrator will ask questions to gain a basic understanding of the reported sexual misconduct. The questions will address the key facts to appropriately assess and determine next steps moving forward. If a complainant wants to move forward with a formal complaint, the Title IX administrator will determine if the complaint meets the following:

- Does the information provided constitute a violation of the College's sexual misconduct policy?
- Should the College proceed with formal resolution or informal resolution?

The determination for next steps will be made within three (3) business days of the intake meeting, and the complainant will be notified in writing of next steps.

The intake meeting with the respondent will:

- Discuss immediate concerns for physical safety and emotional well-being.
- Notify respondent that the complainant has the option (and right to decline) to file a report with local law enforcement agencies and seek medical treatment off-campus.
- Notify the respondent of the allegations of the complaint.
- Provide information about resources, interim measures, and remedies both on-campus and off-campus including, but not limited to, counseling services, housing accommodations, academic support, no contact orders, campus safety escorts, work situations, and transportation, regardless of whether a formal report is made with the College or local law enforcement.
- Provide an overview of the procedures, process, and options for resolution.
- Explain the right to an advisor of choice/support person. A list of trained College advisors will also be reviewed.
- Discuss if there is a pattern evidence or other similar conduct by the respondent.
- Explain the applicability of the College's medical assistance amnesty policy.
- Explain retaliation and the prohibition of it.
- Discuss the Clery Act and Ohio Revised Code obligations.

This information will also be provided in writing.

If the Title IX administrator determines that there is need for a formal resolution, then the College will proceed with initiating a formal investigation.

### **Formal Investigation**

Both parties will typically receive notice in writing that a formal investigation is commencing within three (3) business days of the intake meeting. The notice will include:

- Complainant's name
- Respondent's name
- Reported policy violation(s)
- Date(s) and time(s) of reported policy violation(s)
- Location(s) of reported policy violation(s)
- Information about the investigator
- Opportunity to provide a list of witnesses who have relevant information to the allegations.

If the Respondent has failed to respond to meeting requests, the notification will also include:

- Information about resources, interim measures, and remedies both on-campus and off-campus including, but not limited to, counseling services, housing accommodations, academic support, no contact orders, campus safety escorts, work situations, and transportation, regardless of whether a formal report is made with the College or local law enforcement.
- Any interim measures that have been enacted.
- Notification that the complainant has the option (and right to decline) to file a report with local law enforcement agencies and seek medical treatment off-campus.
- Overview of the procedures, process, and options for resolution.
- The right to an advisor of choice/support person. A list of trained College advisors will also be provided.
- Explanation of the applicability of the College's medical assistance amnesty policy.
- Explanation of retaliation and the prohibition of it.
- The Clery Act and Ohio Revised Code obligations.

The investigation process varies depending on the role of the individuals involved. When the complaint that is made is a cross-constituent complaint, the process followed is the process associated with the role of the respondent.

**Student Respondent:** The investigation will generally involve meeting with the complainant, respondent, and witnesses separately to conduct interviews, collect information, and clarify information as shared with the investigator from all persons

involved. The complainant and respondent receive a copy of their respective statement to review and may make corrections or amendments. Complainants and respondents may provide lists of relevant witnesses. The investigator, in consultation with the Title IX Coordinator, will make the final determination regarding relevance of witnesses. After their statements have been confirmed, the College will provide a complete copy of the investigator's report to the complainant and respondent. Each party will have the opportunity to respond to the other's statement and/or dispute or correct information in the report. Once that is complete, the Title IX Coordinator will forward the report to the Dean of Students Office for adjudication through the College's conduct system. The Director of Student Rights and Responsibility and the Director of Security and Protective Services (or designees), in consultation with the Title IX Coordinator, will conduct a policy analysis prior to issuing a Charge Letter. The policy analysis will determine if the complainant's report, as detailed by the complainant, meets the criteria for a violation of policy. The policy analysis will not include the weighing of evidence, assessment of credibility, determinations of finding, or a discussion of any possible sanctions.

**At-Will Employee Respondent:** The investigation will generally involve meeting with the complainant, respondent, and witnesses separately to conduct interviews, collect information, and clarify information as shared with the investigator from all persons involved. The Title IX Coordinator will forward the report to Human Resources for resolution.

**Tenured or Tenure-Track Faculty Respondent:** The investigation will generally involve meeting with the complainant, respondent, and witnesses separately to conduct interviews, collect information, and clarify information as shared with the investigator from all persons involved. The Title IX Coordinator will forward the report to Human Resources and the Provost for resolution.

## RESOLUTIONS

### Informal Resolution

There are times when informal resolution to a complaint is appropriate. When appropriate, informal resolution is available regardless of the role (i.e. student, at-will employee, or tenured/tenure-track faculty) of the individuals involved. The informal resolution process is designed to eliminate a hostile environment without taking formal disciplinary action against a respondent. Where the initial assessment concludes that informal resolution may be appropriate, the College will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the complainant's access to the educational, extracurricular, and employment activities at the College and to eliminate a hostile environment.

Participation in informal resolution is voluntary, and a complainant or respondent can request to end informal resolution at any time. Pursuing informal resolution does not preclude later use of formal resolution if the informal resolution fails to achieve a resolution acceptable to the parties and to the College and/or one party violates the terms of the informal resolution. The Title IX Coordinator may refer a report for formal resolution at any time and retains the discretion to determine the type of informal resolution that may be appropriate in a specific case.

As part of informal resolution, the Title IX Coordinator may:

- Resolve the report through the implementation of remedies when there is sufficient information about the nature and scope of the conduct to support such a response.
- Act promptly to meet with the parties involved to inform them of the corrective actions.

Remedies may include any option outlined in the Interim Measures and Support section of this policy. Other potential remedies include targeted or broad-based educational programming or training, supported direct confrontation of the respondent, mediation when appropriate (not used in cases of sexual violence), and/or indirect action by the Title IX Coordinator or the College.

Depending on the form of resolution, it may be possible for a complainant to maintain anonymity.

### Formal Resolution

The formal resolution process varies depending on the role of the individuals involved. When the complaint that is made is a cross-constituent complaint, the process followed is the process associated with the role of the respondent.

**Student Respondent:** Formal resolution of a complaint involves adjudication of the complaint through a Conduct Hearing Panel. A Conduct Hearing Panel is comprised of no less than three voting members. The voting members are either faculty or staff and have received student conduct adjudication training as well as education about trauma-informed response to sexual misconduct.

A complainant and/or respondent may challenge the participation of a Conduct Hearing Panel member because of perceived conflict of interest, bias, or prejudice. Such challenges, including rationale, must be made to the Director of Student Rights and Responsibilities at least 48 hours prior to the commencement of the hearing. It should be noted that in these cases, the hearing may be delayed to determine an appropriate replacement for any removed panel member. At its discretion, the Director of Student Rights and Responsibilities will determine whether a panelist should be replaced or not. A panelist will be replaced when they recuse themselves or when it is determined that their bias precludes an impartial hearing of the allegation.

A respondent, complainant, advisor of choice, and/or witness may not bring electronic devices that capture or facilitate communication (e.g., computer, cell phone, audio/video recorder, etc.) into a hearing room. The panel will make an audio recording of the hearing to be kept on file in a secure location in the and/or in a secure database management system for at least seven years. Files related to cases of sexual misconduct may be kept indefinitely. Reasonable care will be taken to create a quality audio recording and minimize technical problems; however, technical problems that result in no recording or an inaudible one will not be a valid argument for appeal.

The Panel will determine what witnesses to call, if any. Either the complainant or respondent may request the calling of specific witnesses to the Panel. It is the expectation of the College that all relevant witnesses will have participated in the prior investigation. The request for witness participation in the Conduct Hearing Panel will be submitted in writing and should address the information that will be presented by the witness that is above and beyond what was gathered by the investigation as well as rationale for why a witness was unable to participate in the prior investigation (if applicable).

All questions must be related to policy elements of the violations being charged or related to content/clarification of the case materials. Questions related to personal character are not relevant and are not permitted.

A complainant and respondent will not be in the room together at any time. The parties may not question each other or other witnesses directly, but may raise questions to be asked of that party through the Conduct Hearing Panel which will determine whether to proceed with the question. The Conduct Hearing Panel determines the relevancy of the questions and may deny the request for the question. If a request is denied, reasoning will be provided to the requesting party.

Either the respondent or the complainant may appeal the decision within five (5) business days of the notification of the outcome. An appeal can be made for one of three reasons: 1) New evidence that was not available at the time of investigation or hearing that could substantially impact the original finding or sanction, 2) Procedural error that significantly impacted the outcome of the hearing, or 3) Sanctions imposed are substantially outside the parameters or guidelines set by the College for this policy violation or the cumulative conduct record of the responding student. Appeals must be made in writing to the Dean of Students and Vice President for Student Life. Appeals will be reviewed by the Dean of Students or their designee. If the appellate officer deems that the appeal does not have standing, there will be no change to the original finding or sanction. If the appeal officer deems that the appeal does have standing, they may decide on the appeal directly, may remand the question back to the original hearing body, or may convene a new hearing body to make a final determination. Any decision made from this process is final.

**At-Will Employee Respondent:** A completed investigation will be referred to Human Resources for resolution.

**Tenure/Tenure-Track Faculty Respondent:** A completed investigation will be referred to the Office of the Provost for resolution.

## **STANDARD OF PROOF**

In resolving complaints of discrimination, harassment, and sexual misconduct, the College will use a "preponderance of evidence" standard, which is "more likely than not" that a violation occurred. This is a lower evidentiary standard than that imposed through the local court system which is "beyond a reasonable doubt."