



WHEELING UNIVERSITY

Wheeling University Grievance Procedures for Matters Involving Sexual Misconduct or Related Retaliation or Intimidation

These *Grievance Procedures for Matters Involving Sexual Misconduct or Related Retaliation or Intimidation* (“Procedures”) govern violations of the University’s *Policy Regarding Sexual Misconduct, Retaliation and Intimidation* (the “Policy” or “Sexual Misconduct Policy”), available at <http://www.wju.edu/titleix>

Please see the Policy for the definitions of capitalized terms contained in these Procedures.

Generally, these Procedures identify the: (a) method by which individuals can file complaints under the Sexual Misconduct Policy; (b) investigation and adjudication process, and evidentiary standards that apply to same; (c) available informal resolution processes; and (e) the method for appealing the outcome of any hearing.

I. THE UNIVERSITY’S SEXUAL MISCONDUCT DISCIPLINARY PROCESS (“Process”)

A. Timely Resolution

Absent special circumstances, the process of resolving complaints alleging a violation of the Policy, exclusive of any appeal, will normally be completed within 60 business days of the filing of a complaint. A decision on any appeal should be completed, absent special circumstances, within 30 business days of the filing of the appeal.

B. Rights and Protections for Complainant and Respondent

- Complainant and Respondent are both entitled to seek support from the University and to be informed about the Process.
- Complainant and Respondent both have the right to participate in the Process, or to refrain from participation. The failure to participate will not be used as evidence against either party, but also will not prevent the Process from proceeding, unless the Complainant determines to withdraw the complaint and the University determines to abide by that request.
- As explained in Section I.C below, both the Complainant and Respondent may have a lawyer or any other Advisor present when being interviewed by the Investigator and during any meeting associated with the Process; but the lawyer or other Advisor will not be permitted to present statements, seek the production of evidence, or otherwise participate in the Process. The role of the Advisor is to provide support to the party, and to advise on the mechanics of the Process, without interfering with the Process.
- Evidence of prior sexual conduct by the Complainant or Respondent with other partners will not be considered in the Process, and any evidence of a prior sexual relationship between the parties will not be determinative of the issue of Consent. If there is credible evidence of a pattern of violations of the Sexual Misconduct Policy, that evidence may be considered by the Investigator in assessing credibility or evaluating disputed facts.



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- While the Process is underway, the Title IX Coordinator, or a Deputy Title IX Coordinator, will work with the Complainant and Respondent, ensuring appropriate support is provided to both parties. The Title IX Coordinator will also be responsible for implementing any appropriate interim measures, consistent with the Sexual Misconduct Policy.

C. Advisors

As noted, the Complainant and Respondent both have the right to be assisted by an Advisor of their choosing, including an attorney, during the Process, including at any meeting within the Process as described herein.

The decision of whether or not to invite an Advisor is solely that of the Complainant and Respondent.

An Advisor serves to guide an individual through the Process. At any stage in that process, the individual may seek advice from the Advisor, and the Advisor may give advice. However, the Advisor may not speak for the individual or otherwise direct questions to or address others present in any Process meeting. An Advisor cannot also serve in a different role (e.g. witness) during the Process.

The University may remove or dismiss an Advisor who becomes disruptive or who does not abide by the restrictions on their participation, as determined by the person conducting any meeting or proceeding on behalf of the University.

D. Scheduling

Determinative scheduling considerations are the Complainant's and Respondent's academic class or University work schedules, and the University's (including the Investigator's) schedule.

An Advisor's schedule is not determinative, although reasonable efforts will be made to accommodate it. As a general rule, however, disciplinary meetings will generally not be scheduled, rescheduled, or postponed based on the availability of an Advisor to attend.

E. Evidentiary Standard

All allegations of violations under the Policy are decided under a "preponderance of the evidence" standard. Under this standard, the University—through its designated officials—must find, in light of all of the information made available and considered, that the violation is more likely to have occurred than not.

II. REPORTING COMPLAINTS OF A VIOLATION OF THE POLICY REGARDING SEXUAL MISCONDUCT, RETALIATION AND INTIMIDATION

A. Initiating a Complaint

The Title IX Coordinator will be responsible for managing all complaints of violation of the Policy.



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Direct Initiation of a Complaint by Complainant

Any person who believes that they have been the victim of, a violation of the Policy may initiate a complaint with the University's Title IX Coordinator. Complaints must either be presented in writing or based upon information provided by the Complainant to the Title IX Coordinator, who will then memorialize the allegations in writing and have the allegations confirmed by the Complainant.

Initiation of a Complaint by Reporter/Responsible Employee

A report of a purported Policy violation by a Reporter (who is not the Complainant) or a Responsible Employee will lead to the Title IX Coordinator memorializing the allegations in writing and seeking to have them confirmed by the Complainant. Even if the Complainant does not wish to pursue a complaint him/herself, the University may determine, as explained in the Sexual Misconduct Policy, to serve as Complainant and to initiate disciplinary proceedings in appropriate circumstances as outlined in the Policy, after considering any Confidentiality request that may be made. In these cases, a written complaint will be completed by a designee of the University.

To file a complaint, please contact the Title IX Coordinator at:

Title IX Coordinator
316 Washington Ave.
304-243-2650
Title9@wju.com

Complaints can also be completed online at:

https://cm.maxient.com/reportingform.php?WheelingJesuitUniv&layout_id=4

B. Timeframe for Submitting a Complaint

As explained in the Policy, the University does not limit the time for filing a report of a violation of the Policy. Similarly, the University does not limit the time for initiating a Complaint for violation of the Policy; however, the University's ability to investigate or take any action may be limited by the passage of time.

III. INVESTIGATION AND RESOLUTION OF COMPLAINTS

A. Preliminary Determination

Upon receiving or memorializing a Complaint, the Title IX Coordinator, or his/her designee, will make a preliminary determination as to whether the Complaint falls within the purview of the Policy and whether, on its face, there appears to be a sufficient basis to conduct a full investigation. This is a low threshold – the question is, essentially: “if the information being asserted is true, could it be a violation of the Policy?” The Title IX Coordinator (or designee) will endeavor to make this determination within seven (7) days of receipt of the Complaint.



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In making this preliminary determination, the Title IX Coordinator (or designee) will consider the nature of the report, the safety of all parties and of the campus community, and the Complainant's expressed preference for resolution.

If the Title IX Coordinator (or designee) concludes there is insufficient basis to proceed, the matter will be concluded, the parties will be so advised, and the outcome becomes final.

If the Title IX Coordinator (or designee) concludes there is a sufficient basis to proceed, the next step is an investigation. Before the investigation commences, the Coordinator (or designee) will issue a Statement of Charge Letter (the "Charge") that explains the nature of the Complaint and identifies the alleged violations of the Policy with sufficient detail that the Respondent may fairly respond. The Charge shall also outline all possible sanctions that could result from a finding of responsibility for the alleged violations. The Charge will be provided to the Complainant and the Respondent; the Title IX Coordinator (or designee) will send the Charge to the parties' University email addresses and campus mailboxes. The Respondent will be provided the opportunity to respond in writing to the Charge within ten (10) days, and any such response will be shared with the Complainant.

Prior to commencement of the investigation, the Title IX Coordinator (or designee) may hold on-on-one pre-investigation meetings with the Complainant and the Respondent to explain the University's Policy and these Procedures.

B. Informal Resolution

After a determination is made that a Complaint will proceed to the investigation phase, but before a full investigation commences, the Title IX Coordinator, or his/her designee, shall informally discuss possible remedies and sanctions with the Complainant and the Respondent to ascertain if a satisfactory resolution of the matter can be reached without the necessity of a full investigation. Both parties must agree to engage in an informal resolution process.

Under no circumstances will a Complainant be directed to resolve a Policy violation directly with Respondent—i.e., directly across the table from one another. Informal Resolution may be unavailable if the Title IX Coordinator (or designee) determines that it is inappropriate based on the facts and circumstances of the particular case, or where a possible outcome is suspension, expulsion, or revocation of a degree. This means, among other things, Informal Resolution is never used in the case of alleged Sexual Assault.

If the Informal Resolution process is used, the Complainant and Respondent will receive written notification of the outcome of the Informal Resolution process. Because of the very nature of the Informal Resolution process, both parties should agree to the outcome. A copy of the written outcome and any Sanction will be placed in the Respondent's educational record. There is no appeal from an Outcome or Sanction reached via Informal Resolution.

Either the Complainant or the Respondent may withdraw their agreement to proceed informally at any time before resolution is finalized, and choose to proceed according to the formal University disciplinary processes instead. In such cases, statements or disclosures made by the parties in the course of the Informal Resolution process may not be used as evidence in the formal University conduct process. However, the Title IX Coordinator (or designee) may consider such statements in determining whether to impose interim and remedial measures.



C. Full Investigation

If a matter cannot be resolved via Informal Resolution, or is not proper for Informal Resolution, it shall proceed to a Full Investigation. The University will designate an Investigator of its choosing from either inside or outside of the University. The University will typically designate a Deputy Title IX Coordinator to conduct an investigation, but may also choose to engage an external Investigator, or another member of the University community, at its discretion. The Investigator will be an individual who has specific training and experience (and who receives annual training on) investigating allegations of Sexual Misconduct and how to conduct an investigation that protects the safety of Complainants and promotes accountability.

The University will seek to conduct the investigation within 45-60 days after it commences. This time may be extended depending on the complexity of the circumstances of each case. Any such extension, and the bases therefore, will be communicated to the Complainant and the Respondent.

The Investigator will coordinate and conduct fact gathering from the Complainant, the Reporter (if different from the Complainant), the Respondent, and any other individuals who may have information relevant to the ultimate determination of responsibility under the Policy. The Investigator will also gather any available physical or medical evidence, including documents, communications between the parties, and electronic records as available and appropriate. Any witness is permitted to have an Advisor present during any interview with an Investigator.

The first step of a Full Investigation will usually be an interview of the Complainant. The interview of the Complainant will inform next steps. It may be, and often will be, appropriate to interview other witnesses before the Respondent, so that the Investigator can be as informed as possible before meeting with the Respondent.

A. A Note on Relevancy and “Evidence”

As noted elsewhere, these Procedures are not formal legal proceedings, and rules of “evidence” in a court of law do not apply. Nonetheless, information that does not directly relate to the facts at issue, but instead reflects upon the reputation, personality, qualities, or habits of an individual is character evidence and is not relevant to the determination of whether there is a Policy violation and will not be considered by the Investigator nor included in their report.

An individual’s character or reputation with respect to other sexual activity is not relevant and will not be considered as evidence. Similarly, an individual’s prior or subsequent sexual activity is typically not relevant and will only be considered as evidence under limited circumstances. For example, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve other questions raised by the report. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.

Where the parties have a prior sexual relationship with one another, and the existence of Consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether Consent was sought and given during the incident in question. However, this does not assume that the prior sexual history was consensual, which itself should be a factor in considering relevance.



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The Investigator may, but need not, record interviews. The Investigator is expected to take accurate interview notes, but they need not be verbatim notes.

B. The Investigation Report

After the Full Investigation is complete, and as soon as feasible, the Investigator shall prepare a Draft Investigation Report that summarizes the information gathered and outlines what information was contested and what was uncontested. That Draft Investigation Report may be shared with the Title IX Coordinator and other appropriate University officials.

The Complainant and the Respondent will also have an opportunity to review, but will not be given copies, and are not permitted to transcribe or take photographs (whether by camera, phone etc.), of the Draft Investigation Report and any additional information that formed the basis of conclusions in the Draft Investigation Report. The Complainant and Respondent are not entitled to review, or to make copies of, the Investigator's personal/underlying notes, if any. Advisors may accompany the Complainant and Respondent during their review; but sharing of the Draft Investigation Report beyond the parties and their Advisors is strictly prohibited.

The Complainant and Respondent, after reviewing the Draft Investigation Report, may also within ten (10) calendar days of their review: (a) meet with the Investigator; (b) submit additional comments and information to the Investigator; (c) identify any additional witnesses or evidence for the Investigator to pursue; and (d) submit any further questions that they believe should be directed by the Investigator to the other party or to any witness.

In the absence of good cause, information discoverable and witnesses identifiable through the exercise of due diligence that are not provided to/identified for the Investigator during this designated review and response period will not later be considered by the Investigator in the determination of responsibility for a violation of the Policy.

Unless there are significant additional investigative steps requested by the parties or identified by the Investigator, within seven (7) calendar days after receipt and consideration of any additional comments, questions and/or information submitted by the parties during the designated review and response period, the Investigator will prepare a Final Investigation Report, which will be made available to the Complainant and Respondent for review in the same manner, and with the same restrictions, as applied to the Draft Investigation Report. The Final Investigation Report will also be provided to the Title IX Coordinator and other appropriate University officials.

The Final Investigation Report will include, at a minimum, the Investigator's: a) assessments of credibility; b) finding as to responsibility (the "Outcome") for each particular alleged violation in the Charge; and c) identification of the Sanctions to be imposed and/or Corrective Action to be taken, if appropriate. In determining the Outcome for each alleged violation, the Investigator will use a "preponderance of the evidence" standard, as that standard is defined in Section I.E above.

The possible outcomes of an investigation are as follows:

- A finding that, based on a preponderance of the evidence, it is more likely than not that the alleged Policy violation(s) occurred ("Responsible");



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- A finding that, based on the preponderance of the evidence, it is more likely than not that the alleged Policy violation(s) did not occur (“Not Responsible”); and
- A conclusion that, based on the information compiled and using a preponderance of the evidence standard, the Investigator is not able to determine whether or not the alleged Policy violation(s) occurred (“Undetermined”).

For an Outcome of Responsible, the Report will explain the rationale for this finding, and shall also identify the Sanction(s) and/or Corrective Action to be imposed as described in Section IV below. The Investigator, trained on the University’s Policies and Procedures, has full discretion to impose these Sanctions or Corrective Action.

For an Outcome of Not Responsible or Undetermined, the Respondent and the Complainant will be simultaneously notified in writing of the Outcome, the rationale, and the procedures to appeal.

Available appellate procedures are outlined in Section V below.

IV. SANCTIONS AND CORRECTIVE ACTION

For Student Respondents, Sanctions for a violation of the Policy may include any of the sanctions that are available for violations of the University’s Student Code of Conduct, including disciplinary probation, suspension or loss of residence life privileges, suspension from the University, expulsion from the University, or revocation of the conferral of a degree. A comprehensive list of potential Sanctions for Student Respondents is provided in Appendix 1.

For faculty and staff Respondents, Sanctions for a violation of the Policy may include any of the Sanctions that are available for violations of the including written reprimand, suspension, termination, discharge or dismissal from the University. A comprehensive list of potential Sanctions for Student Respondents is provided in Appendix 1.

For all Respondents, including Third Parties, Corrective Action may include an order to avoid future contact with Complainant, a requirement for an apology, a transfer (e.g. to another department, class, office, residence), or participation in educational classes, counseling and/or training.

V. APPEALS

An Outcome, Sanctions or Corrective Action are each subject to appeal by either the Complainant or the Respondent on the limited grounds of:

- A substantial procedural error(s) that had a material impact on the Procedures and Process;
- New, material evidence that was not reasonably available at the time of the Investigation; and/or
- An Outcome, Sanction or Corrective Action that is clearly contrary to the weight of the evidence gathered during the Full Investigation.



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Dissatisfaction with the outcome of the Full Investigation, Sanction, or Corrective Action is not grounds for appeal.

An appeal, which must be in writing, must be received by the Title IX Coordinator within seven (7) days following the date on which the parties receive the Final Investigation Report. Letters of appeal should explain in detail the grounds for appeal. The letter of appeal will be promptly shared with the non-appealing party. The non-appealing party may provide a written response to the appeal. Any response by the non-appealing party must be submitted within seven (7) business days from receipt of the appeal.

The appeal will be decided by a Disciplinary Appellate Officer (DAO), who will be either a University faculty member or administrator. The bases upon which the DAO may grant an appeal are strictly limited as outlined above. If the appeal is denied, the matter is closed, and the Investigator's decision with respect to Outcome and any Sanctions and/or Corrective Action stands and is final.

There are two (2) possibilities in the event that the DAO grants an appeal. The DAO may, in their discretion:

1. Remand the case to the Investigator for further investigation or consideration, and provide instructions regarding the nature and extent of that investigation/consideration. The Investigator will act promptly consistent with those instructions. Following that additional investigation/consideration by the Investigator, the Investigator shall issue another Final Investigation Report, modified, if at all, based on the additional investigation and consideration. Any Outcome, Sanctions or Corrective Action imposed by the Investigator after such additional investigation and consideration are final and not subject to further appeal.
2. Modify the Outcome, Sanctions or Corrective Action consistent with his/her decision to grant the appeal. The reasons for this modification must be explained in writing. Any such modified Outcome, Sanctions or Corrective Action is final, and not subject to further appeal.



POTENTIAL UNIVERSITY SANCTIONS FOR COVERED INDIVIDUALS

I. Student Respondents

- A. Verbal Warning:** For some first-time minor violations, the student may receive a Verbal Warning. The Warning remains in effect for a specific period of time, as determined by the Investigator. In most instances, students will only receive one verbal warning for a specified offense during their duration of their time on campus.
- B. Disciplinary/Written Warning:** The student is given formal written notice that the student has violated a code of conduct. The warning remains in effect for a specific period of time, as determined by the Investigator. In most instances, students will only receive one written warning for a specified offense during their duration of their time on campus.
- C. Educational Sanction and/or Activity:** A student is required to perform a positive action for the University community by completing a campus work assignment, writing a letter of apology, completing an educational program, or an educational reflection and/or paper.
- D. Fines:** Fines may be assessed as a punitive measure and fines may include restitution for loss of or damages to University or personal property or cost of medical expenses for bodily injury resulting from a student's actions. Whenever possible, funds attained through fines will be used to support programming in the residence halls that promote the educational mission of the University.
- E. Loss of University Privileges:** Denial of specific University privileges such as, but not limited to residence hall visitation or attendance at University events not required for a student's progression through a degree program for a designated period of time.
- F. Community Restitution:** Non-paid work for the University community, for a specified administrative area or physical plant area of the University. Hours for restitution will range from 5 to 15 hours, depending on the severity of the offense and the student's conduct history.
- G. Conduct Probation:** For specified or indefinite period of time; during this time, the student is deemed not in good student conduct standing and cannot hold an elected or appointed office in any student organizations registered with the University, or hold University paraprofessional employment such as Resident Assistant, Luceat, or



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Summer Conference staff member. Any student placed on conduct probation may lose scholarship money (e.g. Presidential Scholarship, Dean's Scholarship, Athletic Scholarship, or any other Academic Scholarship), eligibility to work in a campus job, and may lose eligibility to represent the University on their Athletic Team.

- H. Weekend Suspension:** The student is not permitted on campus from Friday at 5:00 pm and until Sunday at 5:00 pm.
- I. Residence Hall Transfer or Removal:** A student is required to transfer residence halls or leave the residence halls for a specified or indefinite period of time.
- J. Housing Suspension:** Separation from campus housing for a defined period of time. The student shall be barred from entering all University residences during the time of the Housing Suspension. The student must comply with all Sanctions and/or Corrective Action prior to readmission to campus housing.
- Note: Students suspended from campus housing, regardless of the amount of time remaining in the semester, are not eligible for refunds or rebates for charges associated with housing or meal plans. Additionally, students suspended from campus housing will forfeit the receipt of institutional financial aid up to the full cost of room and board, per the University housing policy.*
- K. University Suspension:** Separation from the University for a defined period of time. During suspension, the student shall not participate in any University-sponsored activity, receive University services, and may be banned from University premises. The University will not accept any credits earned from another institution during this period toward a University degree. The student must comply with any and all Sanctions and/or Corrective Actions prior to readmission. Readmission is to be approved by the Vice President of Student Services.
- Note: Students suspended from the University, regardless of the amount of time remaining in the semester, are not eligible for refunds or rebates for charges associated with housing, meal plans, tuition, or fees.*
 - In the case of suspended students who also receive Title IV federal aid, a Return of Title IV Refund Calculation will be completed; this may result in the suspended student owing an additional balance to the University. This information will be determined on an individual basis by the Financial Aid Office. Please refer to the Academic Catalog Refunds policy for additional information.



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- L. **Withholding Degree.** The University may withhold awarding a degree otherwise earned until the completion of the Process set forth in these Procedures, including the completion of all Sanctions and/or Corrective Action imposed, if any.

- M. **Expulsion:** Permanent separation from the University and University facilities; the student cannot continue at the University in any status.
 - 1. *Note: Students expelled from the University, regardless of the amount of time remaining in the semester, are not eligible for refunds or rebates for charges associated with housing, meal plans, tuition, or fees.*
 - 2. In the case of expelled students who also receive Title IV federal aid, a Return of Title IV Refund Calculation will be completed; this may result in the expelled/suspended student owing an additional balance to the University. This information will be determined on an individual basis by the Financial Aid Office.

- N. **Revocation of Admission and/or Degree:** Admission to or a degree awarded from the University may be revoked at any time for violation of the Policy committed by a student prior to graduation.

II. Faculty and Staff Respondents

- A. **Verbal Warning:** For some first-time minor violations, the employee may receive a Verbal Warning. The Warning remains in effect for a specific period of time, as determined by the Investigator. In most instances, employees will only receive one verbal warning for a specified offense during their duration of their time on campus.

- B. **Disciplinary/Written Warning:** The employee is given formal written notice that the employee has violated a code of conduct. The warning remains in effect for a specific period of time, as determined by the Title IX Coordinator. In most instances, employees will only receive one written warning for a specified offense during their duration of their time on campus.

- C. **Educational Sanction and/or Activity:** An employee is required to perform a positive action for the University community by completing a campus work assignment, writing a letter of apology, completing an educational program, or an educational reflection.

- D. **Fines:** Fines may be assessed as a punitive measure and fines may include restitution for loss of or damages to University or personal property or cost of medical expenses



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for bodily injury resulting from an employee's actions. Whenever possible, funds attained through fines will be used to support programming across campus that promote the educational mission of the University.

- E. Community Restitution:** Non-paid work for the University community, for a specified administrative area or physical plant area of the University. Hours for restitution will range from 5 to 15 hours, depending on the severity of the offense and the employee's conduct history.

- F. Suspension:** Separation from the University for a defined period of time. During suspension, the employee shall not participate in any University-sponsored activity, receive University services, and may be banned from University premises. During suspension periods, the employee will receive no compensation from the University.

- G. Termination:** Permanent separation from the University.