

# WASHINGTON COLLEGE POLICY ON SEXUAL HARASSMENT AND DISCRIMINATION

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## 1. Purpose

Washington College complies with Title IX of the Educational Amendments of 1972 as well as the Title IX regulations released by the Department of Education on April 19, 2024, known as the Final Rule. This policy prohibits all forms of sexual and gender-based harassment and discrimination. This policy also covers sexual misconduct that does not fall within the scope of the new federal regulations. This policy is effective August 1, 2024. For incidents that occurred prior to that date Washington College will utilize previously existing policies & procedures that can be found at here.

Washington College is committed to providing an educational and employment environment that is free from sexual harassment and discrimination.

Washington College values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the resolution process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, Washington College has developed policies and procedures that provide for prompt, fair, and impartial resolution of allegations of sexual harassment and discrimination.

## 2. Title IX Team Contacts

Washington College has designated a group the Title IX Team, comprised of the following individual(s), to coordinate all aspects of the college's response to compliance with Title IX regulations, education and response to allegations, compliance with federal, state, and local civil rights laws and ordinances:

Administrator

Gregory H. Krikorian

Dean of Students | Title IX Coordinator

Student Affairs office, Hodson Hall

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(717) 344-1371

Assistant Title IX Coordinators

Kate Laking

Human Resource Director

Cromwell Hall

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Ryan Colman

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Kari Hughes

Head Women's Rowing Coach

Johnson Fitness Center

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Daly Hall

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Collectively, these individuals are responsible for providing comprehensive sexual harassment & discrimination education and training; coordinating the College's timely, thorough, and fair response, investigation, and resolution of all alleged prohibited conduct under this Policy; and monitoring the effectiveness of this Policy and related procedures to ensure an education and employment environment free from sexual harassment & discrimination. All employees receive Title IX training upon hire and annually thereafter regarding the College's obligation to address sex discrimination, what conduct is prohibited by this Policy, employees' obligation to report sexual misconduct to the Title IX Coordinator, and to provide a pregnant student with the Title IX Coordinator's contact information. Those responsible for implementing these grievance procedures (including the Title IX and deputy coordinators, investigators, and decisionmakers), providing supportive measures, or facilitating informal resolution receive additional training. See Appendix H for more information.

### 3. External Contact Information

Concerns about Washington College's application of this Policy and compliance with certain federal civil rights laws may also be addressed to:

Office for Civil Rights (OCR)

U.S. Department of Education

400 Maryland Avenue, SW

Washington, D.C. 20202-1100

For Complaints involving employee-on-employee conduct:

Equal Employment Opportunity Commission (EEOC)

### 4. Mandated Reporting and Confidential Employees

All Washington College faculty and employees (including student-employees), other than those deemed Confidential Employees, are Mandated Reporters and are expected to promptly report all known details of actual or suspected discrimination, harassment, and/or retaliation to appropriate officials immediately, although there are some limited exceptions. Supportive measures may be offered as the result of such disclosures without formal Washington College action.

Complainants may want to carefully consider whether they share personally identifiable details with Mandated Reporters, as those details must be shared with the Title IX Coordinator.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or Policy violations, and these employees will immediately pass Notice to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following sections describe Washington College's reporting options for a Complainant or third party (including parents/guardians when appropriate):

#### A. Confidential Employees

To enable Complainants to access support and resources without filing a Complaint, Washington College has designated specific employees as Confidential Resources. Those designated by Washington College as Confidential Resources are not required to report actual or suspected discrimination, harassment, or retaliation in a way that identifies the Parties. They will, however, provide the Complainant with the Title IX Coordinator's contact information and offer options and resources without any obligation to inform an outside agency or the Title IX Coordinator official unless a Complainant has requested the information be shared.

There are three categories of Confidential Employees: 1) Those with confidentiality bestowed by law or professional ethics, such as lawyers, medical professionals, clergy, and counselors; 2) Those whom Washington College has specifically designated as confidential for purposes of providing support and resources to the Complainant; and 3) Those conducting human subjects research as part of a study designed to gather information about sex discrimination approved by Washington College Institutional Review Board (IRB) and with respect to information received in the study. For those in category 1), above, to be able to respect confidentiality, they must be in a confidential relationship with the person reporting, such that they are within the scope of their licensure, professional ethics, or confidential role at the time of receiving the Notice. These

individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor, elder, or individual with a disability, or when required to disclose by law or court order.

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

Confidential Employees

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination

Employees who have confidentiality as described above, and who receive Notice within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

Failure of a Mandated Reporter, as described above in this section, to report an incident of discrimination, harassment, or retaliation of which they become aware is a violation of Washington College Policy and can be subject to disciplinary action for failure to comply/failure to report. This also includes situations when a harasser is a Mandated Reporter. Such individuals are obligated to report their own misconduct, and failure to do so is a chargeable offense under this Policy.

A Mandated Reporter who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

In addition, Complainants may speak with individuals unaffiliated with the college without concern that Policy will require them to disclose information to the institution without permission:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors available through For All Seasons
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

## 5. Scope

This Policy is only applicable to alleged incidents that occur on or after August 1, 2024. For alleged incidents of sexual harassment occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. The applicable version of those policies and procedures are available here.

This Policy applies to all faculty, employees, students, and other individuals participating in or attempting to participate in Washington College's program or activities, including education and employment.

## 6. Jurisdiction

This Policy applies to Washington College's education programs and activities (defined as including locations, events, or circumstances in which Washington College exercises substantial control over both the Respondent and the context in which the conduct occurred), circumstances where Washington College has disciplinary authority, and to misconduct occurring within any building owned or controlled by a Washington College-recognized student organization.

This Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to Washington College's education program or activities. Washington College may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a substantial Washington College interest.

A substantial Washington College interest includes:

- 1) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.
- 2) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.

- 3) Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
- 4) Any situation that substantially interferes with Washington College's educational interests or mission.

For disciplinary action to be issued under this Policy, the Respondent must be a Washington College faculty member, student, or employee at the time of the alleged incident. If the Respondent is unknown or is not a member of the college community, the Title IX Coordinator will offer to assist the Complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). The Title IX Coordinator can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

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

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences sexual harassment or discrimination in an externship, study abroad program, or other environment external to Washington College where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct that impact a student or employee's work or educational environment, those effects can often be addressed remedially by the Administrator if brought to their attention.

## 7. Supportive Measures

Title IX Coordinator will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged discrimination, harassment, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to the college's education program or activity, including measures designed to protect the safety of all Parties and/or the college's educational environment and/or to deter discrimination, harassment, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the Parties upon receiving Notice/Knowledge or a Complaint. At the time that supportive measures are offered, if a Complaint has not been filed, the Title IX Coordinator will inform the Complainant, in writing, that they may file a Complaint with the Title IX Coordinator either at that time or in the future. The Title IX Coordinator will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The Title IX Coordinator will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the Title IX Coordinator's ability to provide those supportive measures. The Title IX Coordinator will act to ensure as minimal an academic/occupational impact on the Parties as possible. The Title IX Coordinator will implement measures in a way that does not unreasonably burden any party.

These actions may include, but are not limited to:

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

- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

The Parties are provided with a timely opportunity to seek modification or reversal of the Title IX Coordinator's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Title IX Coordinator. An impartial employee other than the employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the definition of supportive measures in § 106.2 of the federal Title IX Regulations. The college will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances change materially. The college typically renders decisions on supportive measures within five (5) business days of receiving a request and provides a written determination to the impacted party(ies) and the Administrator.

## 8. Online Harassment and Misconduct

Washington College policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on Washington College's education program and activities, or when they involve the use of college networks, technology, or equipment.

Although Washington College may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to Washington College, it will engage in a variety of means to address and mitigate the effects. These means may include use of the Resolution Process to address off-campus conduct whose effects contribute to limiting or denying a person access to Washington College's education program or activity.

## 9. Inclusion Related to Gender Identity/Expression

Washington College strives to ensure that all individuals are safe, included, and respected in their working and learning environments, regardless of their gender identity or expression, including intersex, nonbinary, transgender, agender, two-spirit, and gender-diverse students and employees.

Discrimination and harassment on the basis of gender identity or expression are not tolerated by the college. If a member of the campus community believes they have been subjected to discrimination under this Policy, they should follow the appropriate reporting process described herein.

In upholding the principles of equity and inclusion, Washington College supports the full integration and healthy development of those who are transgender, transitioning, nonbinary, or gender-diverse, and seeks to eliminate any stigma related to gender identity and expression.

The college is committed to fostering a climate where all identities are valued, contributing to a more vibrant and diverse community. The purpose of this Policy is to have Washington College administratively address issues that some students and employees, including those identifying as intersex, transgender, agender, nonbinary, and gender-diverse, may confront as they navigate systems originally designed around the assumption that gender is binary. As our society's understanding of gender evolves, so do the college's processes and policies.

Concepts like misgendering and deadnaming may not be familiar to all but understanding them is essential to college's goal of being as welcoming and inclusive a community as possible.

Misgendering or mispronouncing is the intentional or unintentional use of pronouns or identifiers that are different from those used by an individual. Unintentional misgendering is usually resolved with a simple apology if someone clarifies their pronouns for you. Intentional misgendering is inconsistent with the type of community we hold ourselves out to be and may constitute a Policy violation if the effect is greater than de minimis harm. We each have a right to determine our own gender identity and expression, but we don't get to choose or negate someone else's.

Deadnaming, along with misgendering, can be very traumatic to a person who is transgender, transitioning, nonbinary, or gender diverse. Deadnaming means using someone's birth-assigned (cisgender) name, rather than the name they have chosen.

To a person who is transgender, transitioning, nonbinary, or gender-diverse, their cisgender identity may be something that is in their past – dead, buried, and behind them. To then revive their deadname could trigger issues, traumas, and experiences of the past that the individual has moved past, or is moving past, and can interfere with their health and well-being.

Again, unintentional deadnaming can be addressed by a simple apology and an effort to use the person's chosen name. Intentional deadnaming could be a form of bullying, outing, or otherwise harassing an individual, and thus should be avoided.

This Policy should be interpreted consistent with the goals of maximizing the inclusion of intersex, transgender, transitioning, agender, nonbinary, and gender-diverse students and employees, including:

- Maintaining the privacy of all individuals consistent with law
  - Ensuring all students have equal access to educational programming, activities, and facilities, including restrooms and locker rooms
  - Ensuring all employees have equal access to employment opportunities and work, service, or health-related facilities
  - Providing professional development for employees and education for students on topics related to gender inclusion
  - Encouraging all students and employees to respect the pronoun usage and identities of all members of the college community

Washington College uses a number of interventions to address concerns that are raised related to gender-based harassment or discrimination, including problem-solving, intervention, confrontation, investigation, and Policy enforcement. When conflicts arise between the right of members of the community to be free from gender-identity discrimination and those exercising their right to religious freedom, Washington College will try to balance rights and interests to find mutually agreeable outcomes or compromises. When that is not possible, Washington College will offer remedial solutions or enforce its Policies while also respecting the rights of all members of its community.

## 10. Prohibited Conduct

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discrimination, harassment, and retaliation. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of prohibited Sexual discrimination, harassment, and retaliation that are also prohibited under Washington College Policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of Washington College Policy, though supportive measures will be offered to those impacted.

All offense definitions below encompass actual and/or attempted offenses.

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice-versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly.

Violation of any other Washington College policies may constitute discrimination or harassment when motivated by actual or perceived protected characteristic(s), and the result is a limitation or denial of employment or educational access, benefits, or opportunities.

### A. Discrimination

Discrimination is different treatment with respect to an individual's employment or participation in an education program or activity based, in whole or in part, upon the individual's actual or perceived protected characteristic. Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for disability, religion, or creed.

Discrimination can take two primary forms:

#### 1) Disparate Treatment Discrimination:

- Any intentional differential treatment of a person or persons that is based on a person's actual or perceived protected characteristic and that:
  - Excludes a person from participation in;
  - Denies the person benefits of; or
  - Otherwise adversely affects a term or condition of a person's participation in a Washington College program or activity.

#### 2) Disparate Impact Discrimination:

- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:
  - Excludes a person from participation in;
  - Denies the person benefits of; or

- Otherwise adversely affects a term or condition of a person's participation in a Washington College program or activity.

#### B. Discriminatory Harassment

- unwelcome conduct on the basis of actual or perceived protected characteristic(s), that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from Washington College education program or activity

#### C. Sex-based Harassment (Applicable under Title IX, Title VII, and the Fair Housing Act)

Sex-based Harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex<sup>1</sup>, including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking.

##### 1) Quid pro quo:

- an employee agent, or other person authorized by the college,
- to provide an aid, benefit, or service under the college's education program or activity,
- explicitly or impliedly conditioning the provision of such aid, benefit, or service,
- on a person's participation in unwelcome sexual conduct.

##### 2) Hostile Environment Harassment:

- unwelcome sex-based conduct, that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from Washington College's education program or activity

Throughout this Policy, "on the basis of sex" means conduct that is sexual in nature, or that is directed to the Complainant because of his/her/their actual or perceived sex or gender identity.

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 and not based on a protected characteristic. Addressing such conduct will not result in the imposition of discipline under Washington College Policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

For assistance with Alternative Resolution and other Informal Resolution techniques and approaches, contact the Title IX Coordinator.

##### 3) Sexual Assault:

Any sexual act, including Rape, Sodomy, Sexual Assault with an Object, or Fondling directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also unlawful sexual intercourse.

##### a. Rape:

- Penetration,
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent
- because of their age or

- because of their temporary or permanent mental or physical incapacity
  - b. Sodomy
- Oral or anal penetration
- of the Complainant by the Respondent
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent
- because of their age or
- because of their temporary or permanent mental or physical incapacity

c. Sexual Assault with an Object

- Respondent's use of an object or instrument
- to unlawfully penetrate, however slightly, the genital or anal opening
- of the body of the Complainant,
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent
- because of their age or
- because of their temporary or permanent mental or physical incapacity

d. Fondling:

- The touching of the private body parts (breasts, buttocks, groin) of the Complainant by the Respondent
- or causing the Complainant to touch the Respondent's private body parts
- intentionally for a sexual purpose
- without the consent of the Complainant, including instances where the Complainant is incapable of giving consent
- because of their age or
- because of their temporary or permanent mental incapacity or physical incapacity

e. Incest:

- Nonforcible sexual intercourse between persons who are related to each other
- within the degrees wherein marriage is prohibited by Maryland law.

f. Statutory Rape:

- Nonforcible sexual intercourse with a person
- who is under the statutory age of consent of the Maryland

4) Dating Violence:

- Violence committed by a Respondent,
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant; and
- where the existence of such a relationship shall be determined based on a consideration of the following factors:



- length of the relationship
- type of relationship
- frequency of the interaction between the Parties involved in the relationship.

#### 5) Domestic Violence:

- Felony or misdemeanor crimes committed by a person who:
  - is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of Maryland or a person similarly situated to a spouse of the Complainant;
  - is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
  - shares a child in common with the Complainant; or
  - commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of Maryland

#### 6) Stalking:

- engaging in a course of conduct on the basis of sex, that is,
- directed at a specific person that would cause a reasonable person to:
  - fear for the person's safety, or
  - the safety of others; or
  - suffer substantial emotional distress.

#### Sanction Ranges

- The range of sanctions for sex discrimination is warning through expulsion or termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Quid Pro Quo harassment is warning through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Hostile Environment harassment is warning through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Rape is suspension through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Sexual Assault with an Object is suspension through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Sodomy is suspension through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Fondling is warning through suspension (termination for employees). Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Incest is warning through probation. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Statutory Rape is warning through suspension (termination for employees). Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Stalking is probation through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.

- The range of sanctions for Dating/Domestic Violence is probation through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Sexual Exploitation is warning through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Retaliation is warning through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.

#### Sexual Misconduct

##### 7) Sexual Exploitation:

- an individual taking non-consensual or abusive sexual advantage of another, that does not constitute Sex-based Harassment as defined above.
- for their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)
- Creating or disseminating images or videos of child sexual abuse material

##### D. Other Prohibited Conduct:

###### 1) Retaliation:

- Adverse action, including intimidation, threats, coercion, or discrimination,
- against any person,

- by the college, a student, employee, or a person authorized by the college to provide aid, benefit, or service under Washington College education program or activity,
- for the purpose of interfering with any right or privilege secured by law or Policy, or
- because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Process under the sexual harassment 7 discrimination policy & procedures, including an Informal Resolution process, or in any other appropriate steps taken by the college to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for the college to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under the Equal Opportunity, Harassment, and Nondiscrimination Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

#### 2) Unauthorized Disclosure:

- Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by Washington College; or
- publicly disclosing a party's personally identifiable information without authorization or consent.

#### 3) Failure to Comply/Process Interference

- Intentional failure to comply with the reasonable directives of Title IX Coordinator in the performance of their official duties, including with the terms of a no contact order
- Intentional failure to comply with emergency removal or interim suspension terms
- Intentional failure to comply with sanctions
- Intentional failure to adhere to the terms of an agreement achieved through informal resolution
- Intentional failure to comply with mandated reporting duties as defined in this Policy
- Intentional interference with the Title IX resolution process, including but not limited to:
  - Destruction of or concealing of evidence
  - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
  - Intimidating or bribing a witness or party

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

#### E. Consent, Force, and Incapacitation

As used in this Policy, the following definitions and understandings apply:

##### 1) Consent

Consent is defined as:

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

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

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

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can establish consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to be kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease within a reasonably immediate time.

Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault.

Proof of consent or non-consent is not a burden placed on either party involved in a Complaint. Instead, the burden remains on Washington College to determine whether its Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault.

## 2) Force

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," which elicits the response, "Okay, don't hit me. I'll do what you want.>").

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person's consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

## 3) Incapacitation

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, and how" of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

Incapacitation is determined through consideration of all relevant indicators of a person's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

## F. Unethical Relationships (TBD)

## 11. Standard of Proof

The College uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that Washington College will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s).

## 12. Reports/Complaints of Discrimination, Harassment, and/or Retaliation

A Report provides notice to the Respondent of an allegation or concern about sexual discrimination, harassment, or retaliation and provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures. A Complaint provides notice to the Respondent that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a report and may decide at a later time to make a Complaint. Reports or Complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- 1) File a Complaint with, or give verbal Notice directly to, the Title IX Coordinator or to any member of the Title IX Team. Such a Complaint may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office of the Title IX Coordinator or any other Title IX Team member listed in this Policy.
- 2) Submit online Notice here. Anonymous Notice is accepted, but the Notice may give rise to a need to try to determine the Parties' identities. Anonymous Notice typically limits Washington College's ability to investigate, respond, and provide remedies, depending on what information is shared. Measures intended to protect the community or redress or mitigate harm may be enacted. It also may not be possible to provide supportive measures to Complainants who are the subject of anonymous Notice.

Reporting carries no obligation to initiate a Complaint, and in most situations, the Title IX Coordinator is able to respect a Complainant's request to not initiate a resolution process. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where the Title IX Coordinator may need to initiate a resolution process. If a Complainant does not wish to file a Complaint, the Title IX Coordinator will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by giving Notice that allows the Title IX Coordinator to discuss and/or provide supportive measures, in most circumstances.

## 13. Time Limits on Reporting

There is no time limitation on providing Notice/Complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on Notice/Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the Title IX Coordinator's discretion; they may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

## 14. False Allegations and Evidence

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

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate Washington College policies.

## 15. Confidentiality/Privacy

Washington College makes every effort to preserve the Parties' privacy. The College will not share the identity of any individual who has made a Complaint of sexual harassment discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of discrimination, harassment, or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and procedures

### Unauthorized Disclosure of Information

Parties and Advisors are prohibited from unauthorized disclosure of information obtained by the College through the Resolution Process, to the extent that information is the work product of the College (meaning it has been produced, compiled, or written by College for purposes of its investigation and resolution of a Complaint). It is also a violation of College Policy to publicly disclose work product or a party's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions.

## 16. Emergency Removal/Interim Actions/Leaves

The College can act to remove a student Respondent accused of Sex Discrimination or Sex-based Harassment from its education program or activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator and may be

done in conjunction with the Behavioral Intervention Team using its standard objective violence risk assessment procedures. Employees are subject to existing procedures for interim actions and leaves.

## 17. Federal Timely Warning Obligations

Washington College must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the College community.

Washington College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## 18. Amnesty

Washington College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to give Notice to College officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the College community that Complainants choose to give Notice of misconduct to College officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process.

To encourage reporting and participation in the process, College maintains a Policy of offering Parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by the College, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

### A. Students

The College maintains an amnesty policy for students who offer help to others in need.

### B. Employees

Sometimes, employees are hesitant to report discrimination, harassment, or retaliation they have experienced for fear of getting in trouble themselves. The College may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

## 19. Preservation of Evidence

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders, and it is particularly time sensitive. The Title IX Coordinator will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

### Sexual Assault

- Seek forensic medical assistance at the nearest hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or a secure evidence container (if provided one by law enforcement)
- Seeking medical treatment can be essential, even if it is not for the purposes of collecting forensic evidence.

### Stalking/Dating Violence/Domestic Violence/Sex-Based Harassment

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
- Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
- Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).

- Save copies of email and social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence, including notes, gifts, etc., in place when possible.
- Save copies of any messages, including those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

During the initial meeting between the Complainant and Title IX Coordinator, the importance of taking these actions will be discussed, if timely.

## 20. Federal Statistical Reporting Obligations

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

1. All “primary crimes,” which include criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson
2. Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
3. Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking
4. Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations

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

## 21. Independence and Conflicts of Interest

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

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the Vice President of Student Affairs, Sarah Feyerherm. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other Resolution Pool member should be raised with the Title IX Coordinator.

## 22. Revision of this Policy

This Policy succeeds previous policies addressing discrimination, harassment, sexual misconduct, and/or retaliation, though previous policies and procedures remain in force for incidents occurring before August 1, 2024. The Title IX Coordinator and Title IX Team reviews and updates these policies and procedures regularly. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

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

This document does not create legally enforceable protections beyond the protections of the background state and federal laws that frame such policies and codes, generally. =

This Policy is effective August 1, 2024.

### RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF POLICY ON EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION

(Hereinafter the “Resolution Process”)

#### APPENDIX A: INFORMAL RESOLUTION (IR) FRAMEWORK

The Informal Resolution (IR) process includes four options:

1. Supportive Resolution. When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.

2. Educational Conversation. When the Title IX Coordinator can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations. (The Complainant can be involved in this conversation if they wish.)
3. Accepted Responsibility. When the Respondent accepts responsibility for violating Policy and accepts the recommended sanction(s), and the Complainant(s) and Washington College are agreeable to the resolution.
4. Alternative Resolution. When the Parties agree to resolve the matter through an alternative resolution mechanism, such as shuttle negotiation, restorative practices, facilitated dialogue, etc., as described below.

Here are the principles to be considered in supporting Informal Resolution:

- IR can be applied in any discrimination, harassment, retaliation, or Other Prohibited Behavior complaint but may not be appropriate or advisable in all matters, especially those involving serious violence.
- Situations involving dangerous patterns or significant ongoing threat to the community should generally not be resolved by IR, unless a Respondent is accepting responsibility.
- Mediation may not be used as an IR method in cases involving sexual assault.
- The Title IX Coordinator has the authority to determine whether to permit an IR-based resolution, in line with any applicable federal or state requirements.
- Any party can withdraw from the IR process at any time before an agreement is reached.
- An IR Facilitator can also end an IR process early at their discretion.
- IR can be attempted before and in lieu of formal resolution as a diversionary resolution.
- Alternative approaches can inform formal resolution, as in a formal resolution model infused with restorative practices.
- IR-based processes could follow a Final Determination at the Parties' request.
- Alternative Resolution approaches to IR must be facilitated by a designated college representative or a third party. There may be value in creating clearly agreed-upon ground rules, which the Parties must agree to abide by in advance, otherwise the Informal Resolution process may be deemed to have failed.
- Technology-facilitated IR is possible, should the Parties be unable or unwilling to meet in person.
- If IR fails, a Resolution Process can take place thereafter. Evidence elicited within the "safe space" of the IR facilitation could be later admissible in the Resolution Process unless all Parties and the Title IX Coordinator determine it should not be. This will be clearly explained as a term of the decision to engage in the IR process.
- With situations involving violence or sensitive details, the preferred alternative approach typically involves a minimal number of essential Parties. It is not a restorative circle approach with many constituents, in order to ensure privacy.
- Some approaches require acceptance of accountability (this could be more than an acknowledgment of harm). A full admission by the Respondent is not a prerequisite. This willingness needs to be vetted carefully in advance by the Title IX Coordinator before determining that an incident is amenable/appropriate for resolution by IR.
- IR is intended to provide space for information exchange and connection, if desired, by the Parties. This may include supporting a dialogue to allow each party to express their experience of events or a process resulting in an accord or agreement between the Parties (e.g., Complainant, Respondent, College), which is summarized in writing and enforced by the College. This can be a primary goal of the process.
- IR can result in the Parties' voluntary imposition of safety measures, remedies, and/or agreed-upon terms that the College can enforce. These can be part of the agreement.



- IR can result in the voluntary acceptance of “sanctions,” meaning that a Respondent could agree to withdraw or resign, self-suspend (by taking a leave of absence), or undertake other restrictions/transfers/online course options that would help to ensure the Complainant’s safety/educational or employment access in lieu of formal sanctions that would create a disciplinary record for the Respondent. These should be enforceable by the College as part of the agreement, as may be terms of mutual release, non-disparagement, and/or non-disclosure.
- Although a non-disclosure agreement (NDA) could result from IR, it must be mutually agreed upon by the Parties and not coerced, as verified by the Title IX Coordinator.
- Institutions must develop clear rules for managing/facilitating alternative resolution approaches to ensure they are civil, age-appropriate, culturally competent, reflective of an effort to neutralize power imbalances, and maximize the potential for the IR process to result in the Parties’ understanding, restoration, remedy, etc.
- IR agreements may only be written to be binding on the Parties. They cannot include requirements or restrictions for persons or groups who are not a party to the Informal Resolution.

#### APPENDIX B: STATEMENT OF THE PARTIES’ RIGHTS

Under this Policy and procedures, the Parties have the right to:

- An equitable investigation and resolution of all credible allegations of prohibited discrimination, harassment, retaliation, and Other Prohibited Behaviors, when reported in good faith to College officials.
- Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the specific misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated Policies and procedures, and possible sanctions.
- Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations.
- Be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- Have all personally identifiable information protected from the College’s release to the public without consent, except to the extent permitted by law.
- Be treated with respect by all college officials.
- Have College Policy and these procedures followed without material deviation.
- Voluntarily agree to resolve allegations under this Policy through Informal Resolution without pressure, if Informal Resolution is approved by the Title IX Coordinator.
- Not be discouraged by Washington College officials from reporting discrimination, harassment, retaliation, and Other Prohibited Behavior to both on-campus and off-campus authorities.
- Be informed of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by the College in notifying such authorities, if the party chooses. This also includes the right to not be pressured to report.
- Have allegations of violations of this Policy responded to promptly and with sensitivity by Public Safety and/or other college officials.
- Be informed of available supportive measures, such as counseling, advocacy, health care, student financial aid, visa and immigration assistance, and/or other services, both on-campus and in the community.
- A college-implemented no-contact order or a no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.

- Be informed of available assistance in changing academic, living, and/or employment situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur for this option to be available. Such actions may include, but are not limited to:
  - Relocating an on-campus student's housing to a different on-campus location
  - Assistance from college staff in completing the relocation
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation assistance
  - Visa/immigration assistance
  - Arranging to dissolve a housing contract and provide a pro-rated refund
  - Rescheduling or adjusting an exam, paper, and/or assignment
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus safety escorts
  - Alternative course completion options
- Have the Title IX Coordinator maintain supportive measures for as long as necessary and for supportive measures to remain confidential, provided confidentiality does not impair the College's ability to provide the supportive measures.
- Receive sufficiently advanced written notice of any College meetings or interviews involving another party, when possible.
- Identify and have the Investigator(s) and/or Decision-maker question relevant available witnesses, including expert witnesses.
- Provide the Investigator(s)/Decision-maker with a list of questions that, if deemed relevant and permissible by the Investigator(s)/Decision-maker, may be asked of any party or witness.
- Have Complainant's inadmissible sexual interests/prior sexual history or any Party's irrelevant character evidence excluded by the Decision-maker.
- Access the relevant evidence obtained and respond to that evidence.
- A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- Receive a copy of all relevant and permissible evidence obtained during the investigation, subject to privacy limitations imposed by federal and state law and be given five (5) business days to review and comment on the evidence.
- The right to receive a copy of the Final Investigation Report, including all factual, Policy, and/or credibility analyses performed, and to have at least five (5) business days to review the report prior to the determination.
- Be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- Regular status updates on the investigation and/or Resolution Process.
- Have reports of alleged Policy violations addressed by Resolution Process Pool members who have received relevant annual training as required by law.

- A Decision-making panel that is not single sex in its composition, if a panel is used.
- Preservation of confidentiality/privacy, to the extent possible and permitted by law.
- Meetings, interviews, and/or hearings that are closed to the public.
- Petition that any College representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- Be able to select an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.
- Apply the appropriate standard of proof, preponderance of the evidence, to make a Finding and Final Determination after an objective evaluation of all relevant and permissible evidence.
- Be present, including presence via remote technology, during all testimony given and evidence presented during any hearing.
- Have an impact and/or mitigation statement considered by the Decision-maker following a determination of responsibility for any allegation, but prior to sanctioning.
- Be promptly informed of the Resolution Process finding(s) and sanction(s) (if any) and be given a detailed rationale of the decision (including an explanation of how credibility was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay).
- Be informed in writing of when a College decision is considered final and any changes to the Final Determination or sanction(s) that occur post outcome letter delivery.
- Be informed of the opportunity to appeal the Resolution Process finding(s) and sanction(s), and the procedures for doing so in accordance with the College's grounds for appeal.
- A fundamentally fair resolution as defined in these procedures.

#### APPENDIX C: PRIVACY, PRIVILEGE, AND CONFIDENTIALITY

For the purpose of this Policy, the terms privacy, confidentiality, and privilege have distinct meanings.

- Privacy. Means that information related to a complaint will be shared with a limited number of Washington College employees who "need to know" in order to assist in providing supportive measures or evaluating, investigating, or resolving the Complaint. All employees who are involved in the College's response to Notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with federal and state law.
- Confidentiality. Exists in the context of laws or professional ethics (including Title IX) that protect certain relationships, including clinical care, mental health providers, and counselors. Confidentiality also applies to those designated by Washington College as Confidential Employees for purposes of reports under this Policy, regardless of legal or ethical protections. When a Complainant shares information with a Confidential Employee, the Confidential Employee does not need to disclose that information to the Title IX Coordinator. The Confidential Resource will, however, provide the Complainant with the Title IX Coordinator's contact information, assist the Complainant in reporting, if desired, and provide them with information on how the Title IX Coordinator can assist them. With respect to Confidential Employees, information may be disclosed when: (1) the reporting person gives written consent for its disclosure; (2) there is a concern that the person will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or persons with disabilities. Non-identifiable information may be shared by Confidential Employees for statistical tracking purposes as required by the Clery Act/Violence Against Women Act (VAWA). Other information may be shared as required by law.
- Privilege. Exists in the context of laws that protect certain relationships, including attorneys, spouses, and clergy. Privilege is maintained by a provider unless a court orders release or the holder of the privilege (e.g., a client, spouse, parishioner) waives the protections of the privilege. The College treats employees who have the ability to have privileged communications as Confidential Employees.

Only a small group of officials who need to know will typically be told about the Complaint. Information will be shared as necessary with Investigators, Decision-makers, Appeal Decision-makers, witnesses, the Parties, and the Parties' Advisors. The circle of people with this knowledge will be kept as tight as possible to preserve the Parties' rights and privacy, and release is governed by the institution's unauthorized disclosure policy.

The College may contact students' parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student prior to doing so.

#### APPENDIX D: VIOLENCE RISK ASSESSMENT (VRA)

Threat assessment is the process of assessing the actionability of violence by a person against another person or group following the issuance of a direct or conditional threat. A Violence Risk Assessment (VRA) is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

Implementing a VRA requires specific training. It is typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct professionals, and/or other Behavioral Intervention Team (BIT) (sometimes known as CARE team) members.

A VRA occurs in collaboration with the BIT, CARE team, and/or threat assessment team and must be understood as an ongoing process, rather than as a single evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations. It is supported by research from law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use(s) an evidence-based process consisting of:

1. An appraisal of risk factors that escalate the potential for violence.
2. A determination of stabilizing influences, or protective factors, that reduce the risk of violence.
3. A contextual analysis of violence risk by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of the threat; fixation and focus on target; grievance collection; and action and time imperative for violence.
4. The application of intervention and management approaches to reduce the risk of violence.

To assess a person's level of violence risk, the Title IX Coordinator will initiate the VRA process through the Behavioral Concerns Team. The Team will perform the assessment, according to the specific nature of the complaint.

The assessor(s) will follow the process for conducting a VRA as outlined in the Behavioral concerns Team policy and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels.

Some examples of formalized approaches to the VRA process include The NABITA Risk Rubric, The Structured Interview for Violence Risk Assessment (SIVRA-35), Violence Risk Assessment of the Written Word (VRAWW), Workplace Assessment of Violence Risk (WAVR-21), Historical Clinical Risk Management (HCR-20), and MOSAIC.

The VRA is conducted independently from the Resolution Process, informed by it, but free from outcome pressure. The person(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The Behavioral Concerns team conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to the health and/or safety of a person or the community.

In some circumstances, the Title IX Coordinator may determine that a VRA should be conducted as part of the initial evaluation of a Complaint under this Policy. A VRA can aid in critical and/or required determinations, including:

1. Whether to remove the Respondent on an emergency basis because of an immediate threat to a person or the community's health/safety (Emergency Removal)
2. Whether the Administrator should pursue/sign a Complaint absent a willing/able Complainant
3. Whether the scope of an investigation should include an incident, and/or pattern of misconduct, and/or climate of discrimination or harassment
4. To help identify potential predatory conduct
5. To help assess/identify grooming behaviors
6. Whether it is reasonable to try to resolve a Complaint through Informal Resolution, and if so, what approach may be most successful
7. Whether to permit the Respondent to voluntarily withdraw
8. Whether to impose transcript notation or communicate with a transfer institution about a Respondent

9. Assessment of appropriate sanctions/remedies (to be applied post-determination)
10. Whether a Clery Act Timely Warning/Trespass order/Persona Non Grata is needed

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Institutions may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

#### APPENDIX E: TRAINING FOR MEMBERS OF THE RESOLUTION PROCESS POOL

Resolution Process Pool members receive annual training related to their respective roles. This training may include, but is not limited to:

- The scope of Washington College's Sexual Harassment and Discrimination Policy
- Washington College Resolution Process
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias and confirmation bias
- Treating Parties equitably
- Disparate treatment
- Disparate impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- Trauma-informed practices pertaining to investigations and resolution processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all prohibited conduct
- How to conduct an investigation and grievance process, including administrative resolutions, hearings, appeals, and Informal Resolution Processes

- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance and creating an investigation report that fairly summarizes relevant and not impermissible evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping

#### Elements Specific to Title IX

All investigators, Decision-makers, and other persons who are responsible for implementing Washington College's Title IX policies and procedures will receive training related to their duties under Title IX promptly upon hiring or change of position that alters their duties under Title IX or this part, and annually thereafter. Materials will not rely on sex stereotypes. Training topics include, but are not limited to:

- How to conduct a sex discrimination resolution process consistent with the Nondiscrimination Procedures, including issues of disparate treatment, disparate impact, sex-based harassment, quid pro quo, hostile environment harassment, and retaliation
- The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under the Title IX Regulations
- Training for Informal Resolution facilitators on the rules and practices associated with College's Informal Resolution process
- The role of the Title IX Coordinator
- Supportive Measures
- Clery Act/VAWA requirements applicable to Title IX
- College's obligations under Title IX
- How to apply definitions used by Washington College with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with Policy
- Reasonable modifications and specific actions to prevent discrimination and ensure equal access for pregnancy or related conditions
- Any other training deemed necessary to comply with Title IX