

Wheeling Jesuit University Sexual Misconduct Grievance Procedure

The University has adopted a Sexual Misconduct Policy (“Policy”), all of the provisions of which are incorporated herein by reference. A copy of the policy can be viewed at: <http://wju.edu/about/hr/policies/titleix.pdf>. In accordance with Section 8 of that policy, the University adopts and publishes the following grievance procedures for the prompt, fair, impartial and equitable investigation and resolution of sexual misconduct complaints, including discrimination and sexual harassment complaints, filed against University employees, other students, and third parties (“Respondents”). Generally, these procedures provide (a) a method by which individuals can file complaints under Title IX, (b) a description of how those complaints will be investigated, (c) an informal resolution process, (d) procedures for the hearing to adjudicate factual disputes, (e) the method for appealing the outcome of the hearing, and (f) the method by which remedies and sanctions will be imposed.

Pursuant to Title IX and the requirements established by the United States Department of Education, please be aware that:

- Persons who file complaints (“Complainants”) have the right to end the informal process described in Section 3 at any time and to begin the formal stage of the complaint process as outlined in Section 4.
- The University will take steps to prevent the recurrence of any sexual misconduct and remedy discriminatory effects on the Complainant and others, if appropriate.
- The employee responsible for evaluating requests for confidentiality is the Title IX Coordinator as identified in the Policy.
- Reporting policies and protocols are set forth in Section 6 of the Policy, and members of the campus community are encouraged to review those policies and protocols, including the provisions for confidential reporting.
- Title IX prohibits retaliation against the Complainant or any witness involved in the investigation or hearing.
- Complainants have the right to file simultaneously a criminal complaint with appropriate law enforcement agencies and a Title IX complaint with the University.
- Various interim measures may be taken to protect Complainants in the educational setting, including those set forth in Section 3 of the Policy.
- The evidentiary standard that must be used in resolving the complaint is a preponderance of the evidence.
- The potential remedies for Complainants are set forth in Section 3 of the Policy.
- It is the intent of this procedure to provide the Complainant with all rights given to the Respondent.
- The potential sanctions or protective measures which may be imposed against the respondents include the possible reprimand, suspension or expulsion of a student respondent, the possible reprimand, suspension or termination of an employee respondent, and Complainant's options to avoid contact with the Respondent and allow the Complainant to change academic and extracurricular activities or complainant's living, transportation, dining, and working situation as appropriate.

- The process may result in additional remedies for the University community, including greater emphasis on student awareness, educational and professional development courses for students, faculty and staff, and other steps designed to address the specific issues raised by the complaint.
- Sources of counseling, advocacy and support are listed in Sections 3 and 6 of the Policy.
- Information about how the University will protect the confidentiality of victims is listed in Section 6 of the Policy.
- As used in this procedure, “sexual harassment” and “hostile environment” shall have the meanings set forth in Section 5 of the Policy.
- The University will not require a party to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of information relating to the outcome of the proceeding.
- The University shall offer the Complainant all services needed to remedy the hostile environment on an interim basis, all as outlined in Section 3 of the Policy.
- The University shall offer the Complainant all services needed as a final remedy to the hostile environment, even if the Complainant declined the service as a part of an interim measure.
- The mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual misconduct.
- In the event the University is unable to conduct a full investigation, such as when the Respondent is a visitor to the University’s campus, the University shall still consider remedies for both the Complainant and the broader student population.

1. **Initiation of Complaint** – Any person who believes that he or she has been the victim of sexual misconduct as defined in the University’s Policy shall file a written complaint with the University’s Title IX Coordinator as identified in the Policy. In addition, the Title IX Coordinator shall file a complaint whenever the Coordinator believes a violation of the Policy may have occurred. The complaint shall specify the alleged sexual misconduct, the name of the individual who engaged in the alleged misconduct, and such other information as may assist the University in promptly investigating the alleged sexual misconduct.

2. **Investigation** – The Title IX Coordinator or the Coordinator’s designee shall promptly investigate the alleged sexual misconduct in accordance with the provisions of Section 7 of the Policy. Any designee shall have received training in conducting investigations of Title IX complaints. It is the goal of the University to provide for an adequate, reliable, and impartial investigation of each complaint, including the opportunity for both the Complainant and the Respondent to present witnesses and evidence. Upon the conclusion of the investigation, the University shall determine whether probable cause exists to believe that the alleged sexual misconduct occurred. If the University determines that there is no probable cause to believe the alleged sexual misconduct occurred, the complaint shall be dismissed, and both the Complainant and the Respondent shall be notified in writing such determination by the University. If the University determines that there is probable cause to believe that the alleged sexual misconduct occurred, both the Complainant and the Respondent shall be notified in writing of such determination by the University, and an adjudicative hearing shall be scheduled within fourteen (14) days to resolve all disputed facts, if any. The University shall provide both the Complainant and the Respondent of the time and place of the hearing and the names of the members the hearing panel. The hearing shall be conducted in accordance with Section 4. In the event there are no disputed facts, no evidentiary hearing will be held, but a hearing panel will be convened for the limited purpose of determining the appropriate remedies and sanctions to be imposed by the University. Thereafter, the University shall proceed to implement remedies and sanctions pursuant to Section 6.

3. **Informal Resolution Process** - Mediation is never appropriate in sexual misconduct cases and shall not be utilized by the University. However, after a finding of probable cause and prior to the hearing to resolve factual disputes, the University 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 an adjudicative hearing. If so, the remedies and sanctions to which the parties agree shall be imposed. If not, the hearing pursuant to Section 4 will proceed as scheduled.

4. **Adjudicative Hearing** – The purpose of the adjudicative hearing is to resolve any facts disputed by the parties.

- a. **The Hearing Panel** - The hearing shall be conducted by a three-person hearing panel, all three of which shall be selected from a pool of 9 faculty and staff members known as the Hearing and Appeals Panel Pool (HAPP). The President or the President's designee shall appoint members to HAPP annually and select HAPP members to serve as members of the hearing panel for each case. All members of HAPP shall receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and on how to conduct a hearing that protects the safety of victims and promotes accountability. If either party wishes to object to any hearing panel member on the basis of a potential conflict of interest by the hearing panel, the party must notify the Title IX Coordinator of the objection within seven (7) days after receipt of the notice specifying the names of each member the hearing panel. The Title IX Coordinator shall evaluate the objection and determine if different hearing panel members should conduct the hearing.
- b. **The Hearing Process** - The hearing panel shall endeavor to conduct the hearing in a manner that does not inflict additional emotional trauma on the Complainant. The hearing shall permit both the Complainant and the Respondent an equal opportunity to present relevant witnesses and evidence, including expert testimony. The hearing panel members shall determine the probative value of the evidence presented and the rules of evidence shall not be strictly enforced. Seven (7) days prior to the hearing, both the Complainant and the Respondent shall notify the hearing panel of the witnesses and documentary evidence that the party intends to present. Both the Complainant and the Respondent may be represented by legal counsel, but if either of the parties chooses not to be represented by counsel, the other party may still be represented by counsel. The hearing panel shall impose equal restrictions on the ability of legal counsel to speak or otherwise participate in the hearing. Only the Title IX Coordinator, the Complainant and the Respondent, the parties' legal counsel and the parties' parents (if invited by the parties) may attend the hearing, but parents may not participate in the hearing unless they are called as witnesses to address factual disputes. The hearing may proceed if either of the parties fails to attend. The Title IX Coordinator shall present the results of the investigation. The Complainant may then present evidence, and the Respondent may present evidence following the Complainant. Each witness may be cross-examined by opposing counsel or the parties if they are not represented by counsel, but the parties may not cross-examine each other. In the event a party is not represented by counsel and wishes to question the opposing party, the party may submit written questions for the opposing party to the hearing panel members who may ask the questions to the opposing party, if the hearing panel deems such questions relevant to the issues being adjudicated. Questions pertaining to the Complainant's sexual history with anyone other

than the Respondent shall be prohibited. An audio recording of the hearing shall be made and retained by the University.

- c. **Findings of Fact, Conclusions of Law and Remedies and Sanctions** – Within five (5) days following the completion of the hearing, the hearing panel shall prepare findings of fact, conclusions of law and remedies and sanctions (“Findings”). The hearing panel shall make a finding of fact as to whether a hostile environment exists at the University in light of the Findings, and if so, the hearing panel shall make recommendations as to how the hostile environment can be eliminated. In determining sanctions against the Respondent, the hearing panel shall assess whether imposing sanctions against the Respondent, without additional remedies, will be sufficient to eliminate the hostile environment, prevent recurrence, and remedy effects as required by Title IX.
- d. **Notice to the Parties** – The hearing panel shall simultaneously send written notice via email to the parties of the University’s Findings and of the parties’ rights of appeal under Paragraph 5 below. Specifically, the hearing panel shall notify both parties as to whether or not the University found that the alleged conduct occurred, any sanction imposed on the Respondent that directly relate to the Complainant, and other steps the University has taken to eliminate the hostile environment, if the University finds one to exist, and prevent recurrence of the misconduct. The hearing panel shall also notify the Complainant of any individual remedies offered or provided to the Complainant, but, the hearing panel shall not notify the Respondent of the individual remedies offered or provided to the Complainant.

5. Appeals - Either party may appeal the University’s determination of no probable cause or the Findings by the hearing panel by submitting a written statement of appeal to the University’s Title IX Coordinator. The appeal must be received by the Title IX Coordinator within seven (7) days following the date on which the parties received notice of the probable cause determination or the Findings from the hearing panel. The President or the President’s designee shall designate three members of the HAPP to serve as an appeal panel. The appeal panel shall have seven (7) days to grant or deny the appeal. Regardless of which party files the appeal, the appeal panel may reverse the probable cause determination or Findings only if the appeal panel finds that the probable cause determination or the Findings was arbitrary or capricious or if the probable cause determination or Findings was not supported by substantial evidence. If the appeal is granted, the appeals panel shall make such instructions to the Title IX Coordinator or the hearing panel as may be appropriate. The appeal panel’s decision on the appeal shall constitute the final action by the University, and the University shall simultaneously send written notice of the appeal panel’s decision via email to the parties. If neither party appeals the probable cause determination or the Findings, the University shall simultaneously send written notice of the expiration of the time for an appeal via email to the parties. Upon the expiration of the time for an appeal of the probable cause determination or the Findings or upon the appeal panel’s decision on a timely appeal, the University’s decision shall be deemed final.

6. Imposition of Remedies and Sanctions – After the time for an appeal has expired or after the appeals panel’s decision on the appeal is made, the Title IX Coordinator shall take the steps necessary to implement the remedies and sanctions. In the event interim measures should be taken to protect the Complainant at any point prior to the University’s final determination, the Title IX Coordinator may implement such measures in accordance with Section 3 of the Policy.