

Whitman College Grievance Policy

2015-2016

The Grievance Policy

The Grievance Policy is an umbrella policy that covers all members of the Whitman College community and provides a way for community members to bring forward problems, complaints, or grievances. The Grievance Policy will be used to address issues of harassment, discrimination, or violence including sex- or gender-based incidents.

1. PURPOSE AND SCOPE OF THIS POLICY

1.1 Introduction

Whitman College is committed to providing a learning and working environment characterized by mutual respect and fair treatment among all its constituents. An essential component of this environment is a strong ethic and practice of equality, acceptance, and nondiscriminatory interactions. Harassment or discrimination on the basis of race, color, sex, gender, gender identity or manifestation, sexual orientation, religion, age, marital status, national origin, disability, veteran's status, or any other basis prohibited by college policy or by state or federal laws is unacceptable and will be addressed through this policy.

Furthermore, Whitman College strives to provide a safe environment in which students and employees can pursue their education and/or employment free from the detrimental effects of sexual misconduct, which includes, but is not limited to, sexual harassment, domestic violence, intimate partner violence, stalking, sexual assault, and other forms of non-consensual sexual behavior. Therefore, the College seeks to educate students, faculty, and staff about these issues and to provide a means of recourse for those students and employees who believe they have experienced such behavior. The College reserves the right to respond with whatever measures it deems appropriate to prevent sexual misconduct and preserve the safety and well-being of its students and employees.

- Whitman College recognizes that problems, complaints, or grievances might arise in the daily relationships between faculty, staff, and students.
- Individuals at odds with one another are encouraged to first attempt to resolve their differences. The grievance procedure outlined in this policy is primarily for cases where this approach has not been successful or is not appropriate, for example see section 2.4.

1.2 Purpose

- To establish procedures for filing complaints, including those of a sexual nature, from students¹ and employees^{2,3} both formally and informally. *[Note: Throughout this policy faculty and staff are*

referred to as "employees" unless otherwise noted (e.g. non-faculty employees.)]

- To outline procedures for addressing and resolving grievances involving conduct prohibited by Whitman College policy as well as federal and state laws pertaining to higher education and employment.
- To affirm the College's commitment to investigate all notices of allegations of harassment and/or discrimination, including those of a sexual nature, and act to end the violation, prevent its recurrence, and remedy its effect on individuals and the community.
- To define sexual misconduct, which includes sexual harassment, domestic violence, intimate partner violence, stalking, other forms of non-consensual sexual behavior, or sexual exploitation. To identify resources and support for students and employees reporting an incident, including an incident of sexual misconduct.
- To outline processes and procedures to respond appropriately when such incidents do occur.

1.3 Scope & Jurisdiction

- A grievance is a complaint alleging conduct or actions by a member of the Whitman College community, which harms another employee's or student's ability to take full advantage of the College's educational or employment opportunities, or impedes the claimant's⁴ ability to study, learn, or work. This conduct can occur on or away from campus.
- The Grievance Policy applies principally to students, faculty, and staff, but also applies to those who interact with the Whitman community or Whitman affiliated programs.
- Any member of the Whitman community, including but not limited to students, employees, and alumni, has a right to express a grievance.
- This policy applies to all college-related activities both on and off campus and applies to all individuals involved in these activities.
- This policy also applies to conduct by or directed toward third parties, who are not themselves employees or students of Whitman College.

¹Students are defined as those who are enrolled in at least one credit.

²The Faculty shall consist of the President of the College and the members of the instructional staff who hold the title of Dean, Professor, Associate Professor, Assistant Professor, Professor, or Non-tenured Assistant Professor, Associate Professor, or Professor of Forensics, Senior Lecturer, Senior Adjunct Assistant Professor, Visiting Professor, Lecturer, Music Assistant, Adjunct Assistant Professor and Adjunct Instructor.

³All other employees are defined as anyone paid for work by the College, including regular, on-call, full-time, part-time, and temporarily-employed persons.

⁴Whitman College uses the term "claimant" to identify the individual bringing forth a grievance.

The disciplinary action that the College may take will differ depending on the level of control the College has over the harasser. Regardless of the level of disciplinary action taken, Whitman College is committed to remedying the effects of any behaviors that harass, discriminate against, or enact violence against another person based on that person's race, color, sex, gender, gender identity or gender manifestation, sexual orientation, religion, age, marital status, national origin, disability, veteran's status, or any other basis prohibited by college policy.

1.4 Education and Prevention

Whitman College provides ongoing education and training to students and employees on a periodic basis addressing its policies regarding harassment, discrimination, domestic and intimate partner violence, stalking, and sexual misconduct.

- All employees must periodically complete an online training on harassment and other prohibited conduct.
- Title IX and Campus SaVE Act training is provided at a department level on a periodic basis.
- All incoming students and new employees are required to attend sexual misconduct prevention programs.
- In addition to "Green Dot," a nationally recognized program effective in preventing sexual misconduct, students must attend a program designed to educate them regarding their obligation to obtain consent freely, willingly, and knowingly prior to engaging in sexual activity as well as learning about the detrimental role alcohol plays in sexual misconduct.
- All incoming students are required to complete an online educational module focused on issues of personal and community safety.
- The College provides an annual required training for the appropriate Investigative Review Committee⁵ and Sanctioning Boards⁶ (see 4.7 and 4.8) on issues pertaining to particular grievances such as sex- or gender-based offenses.

1.5 Title IX

Title IX is a federal law that states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance."

Title IX applies to students and employees. Title IX provides regulatory provisions to address conduct between students, between students and employees, and between employees.

The Title IX Administrator will coordinate the College's response to reports of sexual misconduct. This includes:

- Assisting students or employees who choose to report an incident of sexual misconduct to the Walla Walla Police Department or other law enforcement agencies
- Making information regarding this policy and related services available to students and employees in print and via the website
- Assisting claimants and responding parties in understanding their rights
- Assistance in obtaining an adviser
- Recommending necessary remedial short-term actions to provide appropriate support and safety. This would include facilitating requests for safe housing, negotiating academic accommodations, and providing referrals to on and off campus resources
- Recommending interim actions such as interim suspension or other measures to protect the safety of the claimant and/or the campus community
- Investigating reports of alleged sexual misconduct between students, between students and employees, and between employees
- Issuing no-contact and no-trespass directives [Note: such directives may remain in place even if an investigation ends in a finding of not responsible.]
- Overseeing the investigation and adjudication processes and if necessary, the appeal procedures

1.6 Employee Reporting Obligations under Title IX

Whitman College employees are required to promptly notify the Title IX Administrator no later than 24 hours after learning of, or when on notice of,

⁵For faculty employees, the Investigative Review Committee will be comprised of the three Division Chairs plus a fourth member to form a gender-balanced committee. The fourth member will be the Division Chair of the appropriate gender whose term has most recently expired. If necessary, in order to account for possible recusal due to an appearance of conflict of interest, and to ensure gender balance, this group will be modified by either removing the appropriate least-senior member of the committee and/or by adding previous Division Chairs until the appropriate gender balance is struck. The additional member will be the most recently serving member of the Division Chairs. For non-faculty employees, the Employee Relations Committee will constitute the Investigative Review Committee. For students, the Office of the Dean of Students will constitute the Investigative Review Committee.

⁶The Sanctioning Board for students is the Council on Student Affairs, or for sex- or gender-based incidents, the Council on Sexual Misconduct, which is made up of a subset of members from the Council on Student Affairs as well as two non-entry level staff members to achieve gender balance. For faculty, the Sanctioning Board is the Faculty Personnel Committee as outlined in the Faculty Code.

instances of sex- or gender-based harassment, discrimination, or misconduct. Excluded from this requirement are the College's licensed counselors, health professionals, or victim's advocate working in that capacity at the College. The College has an affirmative obligation to investigate and to act to resolve such complaints in a prompt and effective manner.

Whitman College has a Title IX Administrator (Julia Dunn, Associate Dean of Students and Title IX Administrator, Memorial Building 330, Whitman College, (509) 524-2049, dunnjl@whitman.edu) who will oversee an investigation conducted by a trained investigator or team of investigators, of any allegations of sex- or gender-based discrimination or misconduct.

1.7 Section 504 and Disability

Whitman College does not discriminate on the basis of disability. The College has adopted this grievance policy in order to provide prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) of the U.S. Department of Health and Human Services regulations implementing the Act. Section 504 prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance. The law and regulations may be examined in the office of Julia Dunn, Associate Dean of Students, (509) 527-5158, dunnjl@whitman.edu, who has been designated to coordinate Whitman College's efforts to comply with Section 504.

Any student who believes they have been subjected to discrimination on the basis of disability may file a grievance under this procedure. It is against the law for Whitman College to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance. The grievance procedures outlined starting at Section 3 will be followed. Any employee who believes they have been subjected to discrimination on the basis of disability may file a grievance under this procedure. Employees who wish to file a grievance should do so with the Director of Human Resources (Dennis Hopwood, (509) 527-5970, hopwoodt@whitman.edu).

Whitman College will make appropriate arrangements to ensure that persons with disabilities are provided other accommodations, if needed, to participate in this grievance process. Such arrangements may include, but are not limited to, providing interpreters for the deaf, providing audio recordings of material for the blind, or assuring a barrier-free location for the proceedings. The Section 504 Coordinator will be responsible for such arrangements.

1.8 Academic Freedom and Freedom of Speech

Whitman College recognizes that the educational process can be controversial and unsettling, particularly when one's ideas or values are being challenged. The learning, working, and living environments might not always be comfortable

for all members of the College community. The College neither censors nor censures speech simply because it is offensive or uncomfortable. In determining whether an act or expression constitutes discrimination or harassment, the context must be carefully reviewed and full consideration must be given to protection of individual rights, freedom of speech, and academic freedom.

2. DEFINITIONS

The following are definitions of terms related to this policy and the grievance process. They reference conduct prohibited by federal and state laws, conduct prohibited by Whitman College policies, and conduct that may place the learning and working environment at risk. This list is not meant to be all-inclusive.

2.1 Discrimination

Discrimination is any distinction, preference, advantage for, or detriment to, an individual compared to others that is based upon an individual's actual or perceived race, color, sex, gender, religion, age, marital status, national origin, disability, veteran's status, sexual orientation, gender identity or manifestation, or other basis prohibited by state and federal laws. Actions or policies that are sufficiently severe or persistent or pervasive and objectively offensive, and result in unequal opportunity in education or employment, or adversely affect the terms and conditions of a person's employment or education at the College, which are motivated or based, in whole or part, on the protected categories can be considered discrimination.

2.2 Discriminatory Harassment

Discriminatory Harassment is an unwelcome action based on an individual's actual or perceived race, color, sex, gender, religion, age, marital status, national origin, disability, veteran's status, sexual orientation, gender identity or manifestation, or any other basis prohibited by state or federal laws that is so severe or persistent or pervasive and objectively offensive that it unreasonably interferes with, limits, or denies a person's ability to work, participate in, or benefit from the College's educational programs or activities.

2.3 Retaliatory Harassment

Retaliatory Harassment is any intentional action taken by an accused individual or allied third party to seek revenge, reprisal, or injury to an individual or group who has exercised the right to file a grievance or make an oral or written report of prohibited harassment or discrimination, or participate in a related grievance proceeding.

2.4 Sexual Harassment

Sexual Harassment is defined as unwelcome verbal or physical conduct of a sexual nature that is sufficiently severe, persistent, or pervasive and objectively offensive such that it unreasonably interferes with, limits, or deprives someone of the ability to participate in or benefit from the College's educational programs or employment opportunities. The unwelcome behavior may be based on power differentials (*quid pro quo*), the creation of a hostile environment, or retaliation. A single instance of sexual assault may be sufficient to constitute a hostile environment. Further examples include:

- Unwelcome sexual advances or propositions that interfere with one's education or employment opportunities
- Unwelcome statements, jokes, gestures, pictures, intentional nonconsensual touching of an intimate body area, gender-based bullying, stereotyping, or other conduct that demeans, harasses, or intimidates
- Using electronic devices or technology (e.g., cell phone, camera, email, Internet sites, or social networks) to record or transmit nudity or sexual acts without a person's knowledge and/or permission
- Coercion or an attempt to coerce an unwilling person into a sexual relationship
- Repeatedly subjecting a person to unwelcome sexual attention
- Conditioning a benefit on submitting to sexual advances (*quid pro quo*).
Examples include:
 - Seeking sexual favors or relationships in return for the promise of a favorable grade or other academic opportunity
 - Basing an employment-related action (hiring, salary increase, performance appraisal rating, promotion, etc.) on a sexual favor or relationship
- Punishing a refusal to comply with sexual advances
- Sexual violence, committing violence within a relationship (domestic/dating/intimate partner violence)
- Repetitive and/or menacing pursuit, following, harassment either in person or with electronic devices (stalking)
- Intentionally observing nudity or sexual acts of another person without the person's knowledge or permission (voyeurism)
- Unwelcome touching of the genitals, buttocks, or breasts that is intentional or other unwelcome touching or groping
- Forcing/coercing someone to touch you or someone else in a sexual manner
- Threatening to sexually harm someone

- Initiating sexual activity with a person who is incapacitated and unable to provide consent due to alcohol and/or drug consumption or other condition
- Inducing incapacitation for the purpose of sexual exploitation
- Ignoring a sexual limit that has been communicated
- Coercing or intimidating or attempting to coerce or intimidate someone into sexual behavior
- Sexual assault, including non-consensual penetration of, or forcing someone to penetrate, an orifice (anal, vaginal, oral) with the penis, finger, tongue, or objects

Sexual harassment is particularly damaging when it exploits the educational dependence and trust between students and faculty/staff. When the authority and power inherent in faculty/staff relationships with students is abused in any way, there is potentially great damage to the individual student, to the accused individual, and to the climate of the institution.⁷

2.5 Consensual Relationships

A consensual relationship, for the purpose of this policy, is defined as a relationship developed between two individuals within the Whitman community that is consensual, romantic, intimate, and/or sexual in nature. Such relationships can prove particularly problematic when there is an unequal power relationship, that is, one of the individuals has actual or perceived power, authority, and advantage over the other. For example, a staff member who has authority to control salary decisions, conduct performance appraisals, and promote employment opportunities, enters into a relationship with a subordinate.

It should be noted that negative consequences, including claims of conflict of interest, coercion and exploitation, sexual harassment, hostile work environment, and retaliation, could arise from a less than amicable ending of a consensual relationship where there is a power differential between individuals. Moreover, under the law, co-workers may assert claims of discrimination when a fellow worker is perceived to be receiving favorable treatment due to a consensual relationship with a supervisor.

The Faculty Code states in part, "It is therefore unacceptable for faculty to have romantic or sexual relationships with students, except when the relationship pre-dates either the student's initial enrollment in courses at Whitman College or the faculty member's initial appointment and the faculty member holds no supervisory or evaluative role over the student." And also, "Similar power differentials may also render it inappropriate for faculty to have romantic or

⁷NCHERM: *The 2011 NCHERM Campus Title IX Coordinator and Certification and Training Course Materials*. Used with permission.

sexual relationships with staff over whom they have supervisory authority.” (For the complete faculty statement on consensual relationships, see Faculty Code, Chapter 2, Article III)

2.6 Consent

The College defines consent as a knowingly, freely, and affirmatively communicated willingness to participate in sexual activity, expressed by clear, unambiguous words or actions. It is the responsibility of the initiator of the sexual activity to ensure that the participants consent to engage in sexual activity. Consent must be present throughout the sexual activity by all parties involved. At any time during sexual activity, a participant may communicate that they no longer consent to continued activity. The initiator of sexual activity may not obtain consent through the use of force, threats, coercion, or intimidation. Sexual activity with someone who is known to be, or based on the circumstances should reasonably be known to be, mentally or physically incapacitated or unconscious through the use of alcohol or other drugs constitutes a violation of this policy, because that individual lacks the capacity to consent. The party seeking to initiate sexual activity must know or reasonably should know of the other party’s inability to consent or will be determined responsible for failure to effectively obtain consent.

One cannot assume consent because of the existence of a previous dating or sexual relationship. The use of alcohol or drugs does not diminish one’s responsibility to obtain consent for sexual activity.

2.7 Incapacitation

To better understand and determine the relationship between the use of alcohol and capacity, we use the National Center for Higher Education Risk Management’s accepted explanation. There are multiple levels of effect, along a continuum:

- The lowest level is impairment, which occurs with the ingestion of any alcohol. A synonym for impairment is “under the influence.”
- The next level is intoxication, also called drunkenness, similar to the state’s drunk driving limit.
 - A person can be “drunk” and also have the capacity to give consent.
- Incapacity is a higher level of alcohol consumption in which an individual is incapable of understanding information presented, appreciating the consequences of acting or not acting on that information, and making an informed choice.
 - One who is physically incapacitated as a result of alcohol or other drug consumption (voluntary or involuntary), or who is unconscious,

unaware, or otherwise physically helpless, is incapable of giving consent.

- One may not engage in sexual activity with another person who one knows or should reasonably know to be mentally or physically incapacitated.
- An individual initiating sexual activity who knows or reasonably should have known that the other party was incapacitated will be in violation of the sexual misconduct policy.
- The highest level is overdose, or alcohol blood poisoning, which may lead to coma or death.

3. GRIEVANCE PROCEDURE

Faculty, staff, and students are encouraged to bring unresolved problems and complaints to the attention of the appropriate college officials outlined below. Some harassment complaints and incidents of interpersonal conflict can be resolved informally, whereas others, such as those involving sex- or gender-based harassment, discrimination, or violence will need to undergo a formal resolution process.

3.1 How to File a Grievance

Members of the Whitman Community who know about an incident or believe they have been subjected to a civil rights violation such as harassment or discrimination, or who have a grievance concerning a serious interpersonal conflict, should meet with individuals in the following offices:

- **Students** who have a complaint or who would like information about the grievance process should go to the Dean of Students Office (Memorial 325) or, for grievances involving sex- or gender-based misconduct, the Title IX Administrator (Julia Dunn, Memorial 330, dunnjl@whitman.edu, (509) 524-2049).
- **Employees (faculty and staff)** who have a complaint or would like information about the grievance process should go to the Human Resources Office (Memorial 104) or the Provost and Dean of the Faculty (Memorial 308). For grievances involving sex- or gender-based behaviors, employees should meet with the Title IX Administrator (Julia Dunn, Memorial 330, dunnjl@whitman.edu, (509) 524-2049).

3.2 Resources and Support

Whitman College provides students with support, counseling, medical referrals, assistance with safe housing, and information concerning their rights. Students can access resources and support through the Dean of Students Office (Memorial 325) or the Victim’s Advocate (Barbara Maxwell, Reid Campus

Center 202, maxwelba@whitman.edu, (509) 527-5208). Employees can access resources and support through the Human Resources Office (Memorial 105). Whitman College provides employees with support, counseling and medical referrals, safety measures, and information concerning their rights. The College will also provide assistance to students and employees in reporting to law enforcement officials.

Any student who has experienced an incident of sexual misconduct may seek confidential support from staff in the Counseling ((509) 527-5195) or Health Center ((509) 527-5281) or from the Victim's Advocate (Barbara Maxwell, Reid Campus Center 202, maxwelba@whitman.edu, (509) 527-5208); employees may seek confidential support from the Victim's Advocate. While these individuals will not relay personally identifiable information without the complaining party's consent, they will provide general information to the Title IX Administrator (Julia Dunn, Memorial 330, dunnjl@whitman.edu, (509) 524-2049) that includes the description of the behavior and the date of the incident. Additional confidential reporting sources for both students and employees are accessible at the YWCA (213 First Street, (509) 525-2570, (509) 529-9922 (24-hour hotline number)).

3.3 Protection from Retaliation

This policy prohibits retaliation against anyone who reports or is believed to have reported harassment, discrimination, or other prohibited behavior, or who is a witness or otherwise involved in a related investigatory proceeding. Such retaliation will be considered a serious violation of this policy, regardless of whether an informal or formal complaint is upheld. Encouraging others to retaliate is also prohibited and will be subject to disciplinary action.

3.4 Prompt Reporting

Prompt reporting of a complaint is strongly encouraged, as it allows rapid response to and resolution of prohibited or objectionable behavior. The passage of significant time between an incident and an investigation can result in memory lapses, the departure of key witnesses, or other time-sensitive factors that can impair the investigation.

3.5 Privacy

College officials who are involved in informal or formal complaint resolution procedures or investigations, as a result of being consulted by the claimant, the accused (responding party), and/or college officials conducting investigations, are obliged to respect the privacy of the individuals involved to the greatest extent possible. The Family Educational Rights and Privacy Act (FERPA) requires protection of students' education records. College officials may not disclose information from a student grievance complaint to anyone other than

those involved in the hearing process or those who have a legitimate education interest (as identified as a legitimate need to know information in order to perform one's job or role with the college). The College will fully cooperate with law enforcement in connection with related investigation and legal proceedings.

While the College will not share information with persons not involved directly in the process, the claimant and the responding party have a right to discuss and share information relating to their case.

3.6 Dishonest Reports

Persons who submit intentionally dishonest reports could be subject to disciplinary action.

3.7 Grievance Withdrawal

At any time during the informal or formal resolution processes (see 4.1 and 4.2), the claimant may withdraw the complaint. However, even if the claimant decides to withdraw the grievance, the College reserves the right to investigate and take appropriate measures, if necessary, to protect the interests and safety of the claimant and the community. If the claimant withdraws the complaint and refuses to cooperate, the likelihood of a meaningful conclusion is severely diminished.

3.8 Uncooperative Responding Party

If the responding party leaves the College or refuses to cooperate with the investigation, the investigation may proceed in their absence and may reach a finding based on the evidence available.

4. GRIEVANCES AND RESOLUTION

4.1 Informal Dispute Resolution

To resolve a dispute informally, a student or employee may first seek advice from their supervisor, department head, or their senior staff member. The Director of Human Resources (typically for staff), the Provost and Dean of the Faculty (typically for faculty), and the Dean of Students (typically for students) are other good sources for advice. An informal resolution can involve a directed conversation, mediation, and/or advice about how to resolve the problem.

- Mediation is clearly inappropriate for certain serious behaviors and incidents, such as sexual assault, sexual misconduct, sexual harassment, and discrimination. The College must take decisive action, including a thorough investigation, immediately when it becomes aware of such complaints.

- If a claimant chooses to forego the informal process or if the informal resolution process proves unsuccessful or if the claimant is dissatisfied with the informal process, the claimant may file a formal complaint with the Director of Human Resources (for staff), the Provost and Dean of the Faculty (for faculty), the Dean of Students (for students) or the Title IX Administrator (Julia Dunn, Associate Dean of Students and Title IX Administrator, Memorial Building 330, Whitman College, (509) 524-2049, dunnjl@whitman.edu) for grievances involving sex- or gender-based harassment, discrimination, and violence.

4.2 Formal Grievance

Grievances can be submitted in oral or written form. The grievance statement should describe the alleged incident, where and when it occurred, and include any supporting materials. Unless this is a case where an informal resolution is not appropriate, the claimant will be asked about the details of the informal efforts they have made to resolve the issue(s). Please note that when the College has received notice of an incident of sexual harassment, misconduct, or discrimination, the Title IX Administrator may initiate an investigation without a formal grievance. The formal grievance process is outlined in a flowchart in Appendix A (for faculty) and Appendix B (for non-faculty employees), and Appendix C (for students).

- When a formal grievance is received, the appropriate senior staff member or their designee will be notified: the Dean of Students for incidents involving students, the Provost for incidents involving faculty, and the Director of Human Resources for incidents involving all other employees.

4.3 Oversight

For the purposes of this policy, the term “Investigative Administrator” will designate the person who will oversee a grievance investigation.

- For incidents involving sex- or gender-based grievances, the Title IX Administrator (Julia Dunn, Memorial Building 330, Whitman College, (509) 524-2049, dunnjl@whitman.edu) will oversee any investigation on behalf of the College. For additional information see sections 1.6 and 1.7.
- For incidents involving disability-based grievances, the 504 Administrator (Julia Dunn, Memorial Building 330, Whitman College, (509) 527-5158, dunnjl@whitman.edu) will oversee any investigation on behalf of the College. For additional information see sections 1.8.

- For all other grievances, the appropriate senior staff member or their designee will oversee the investigation on behalf of the College: for students, the Student Conduct Administrator; for staff the Director of Human Resources, or for faculty, the Provost and Dean of the Faculty.

For the purposes of this policy, the term “Investigative Review Committee” will designate a person or committee of people who will review any investigation to determine that it was thorough, reliable, fair, and impartial.

- For student respondents, the Investigative Review Committee will be the Office of the Dean of Students.
- For non-faculty employees, the Investigative Review Committee will be the Employee Relations Council. The Employee Relations Council (ERC) consists of the Assistant Director of Human Resources, who serves as ex-officio Chair, two staff members with supervisory authority, two non-supervisory staff members, and two faculty members (tenured or non-tenured). When an ERC review becomes necessary, the Chair will select and preside over a hearing panel consisting of three council members, two of whom will be from the staff and one from the faculty. The hearing panel shall be gender balanced and receive training in Title IX and other college policies.
- For faculty employees, the Investigative Review Committee will be a gender-balanced committee of four members, whose makeup will consist of the three Division Chairs plus a fourth member. The fourth member will be the Division Chair of the appropriate gender whose term has most recently expired. If necessary, in order to account for possible recusal due to an appearance of impropriety, and to ensure gender balance, the Investigative Review Committee will be modified by either removing the appropriate least-senior member of the committee, and/or adding previous Division Chairs of the appropriate gender whose terms have most recently expired.

4.4 Gatekeeping

The Investigative Administrator will:

1. Determine the identities and contact information of the claimant and responding party.
2. Conduct an immediate preliminary inquiry to determine:
 - a. Whether the complaining party is willing to engage in the investigation process and allow their identity to be known to the responding party.

- b. Whether or not the alleged behavior suggest increased or ongoing harm to the claimant or other members of the College community.
 - c. Necessary remedial interim actions and accommodations for the claimant.
3. Based upon information obtained in the preliminary inquiry, the Investigative Administrator will determine if there is enough evidence to proceed with a comprehensive investigation.
 - a. If the preliminary inquiry does not yield enough evidence to warrant an investigation, the claimant will be notified and the case will be closed.
 - b. If there is evidence to warrant an investigation, the Investigative Administrator will notify both parties, review the allegations with the responding party, and assign an investigator or investigators to conduct a thorough, reliable, and impartial investigation. Whenever possible, the Investigative Administrator will assign a team of investigators.
 4. Assist parties in identifying an adviser; for cases involving sex- or gender-based behaviors, advisers recommended by the Title IX Administrator will have received training in the policy and procedures (see 4.5 Advisers).
 5. Review the information related to the grievance allegation in order to initiate appropriate response.
 6. Provide appropriate remedies or short-term interim measures as necessary throughout the investigation process for both parties.⁸

4.5 Role of Adviser

The claimant and responding party have the right to have an adviser who will support them as they go through the investigation and adjudication process and prepare for the hearing if necessary.

- Claimant and responding party may select an adviser of their own choosing.
 - To provide support and guidance during the process, the Investigative Administrator will recommend faculty or staff members who are trained and qualified to advise the parties involved based on their knowledge of the process; because of potential conflict of interests, the Whitman College Counseling and Health Center staff are not eligible to serve as advisers.

⁸Examples of remedial short-term actions and relief might include no-contact directives, a change in housing, work shifts, interim suspension, or academic adjustments.

- Parties may choose to have no adviser, or they may choose an adviser other than one that is recommended by the Investigative Administrator.
- The adviser's role is to provide support and to give advice based on their knowledge of the college process.
- Advisers must not have a conflict of interest with either party or with the investigation itself. The appropriate senior staff member will determine whether a conflict exists.
- An adviser may resign their role as adviser at any point without penalty to either the adviser or the party they advise.
- Advisers may not interrupt or interfere with the investigation or adjudication process.
 - Advisers cannot actively participate, ask questions, or cross-examine during a hearing, but they may communicate with their party during a hearing so long as the consultation does not disrupt the proceedings.
- Parties may elect to have their legal counsel serve as their adviser but the legal counsel's role is limited to that of an adviser only. Legal counsel serving as an adviser may not actively represent the party in hearing and appeal proceedings.
- Advisers may not contact any voting members of the Investigative Review Committee or Sanctioning Board, (except the Chair, as described below), the other party, witnesses, or the adviser for the other party regarding the case.
- Advisers may contact the Investigative Administrator for clarification on procedural matters.⁹
- Advisers may contact the Chair of the Investigative Review Committee or Sanctioning Board in order to receive clarification on procedural matters.
- Before committing to advising, potential advisers may request access to all available evidence and reports to which their party has access. Once they have agreed to serve as an adviser, they will continue to have access to new evidence and reports at the discretion of the party they are advising.
- An adviser may request a break during any hearing or interviews.

4.6 Investigation Procedure

Whitman College respects the human dignity of all members of our community. The College believes in and provides a fundamentally fair process when responding to a civil rights allegation by engaging in an investigative

⁹Procedural matters are those outlined in this policy.

model that is prompt, equitable, thorough, reliable, and impartial. A fair process for both the claimant and the responding party is created by ensuring that both parties are:

1. Given comprehensive notice of the allegations,
2. Provided an opportunity to present and respond to all evidence and witnesses throughout the investigative process, and
3. Provided notice of the outcome of the investigation and any subsequent sanctions and/or remedies.

For all grievances the Investigative Administrator (see 4.3), in consultation with the investigator or team of investigators, will:

1. Consult with the claimant to determine what interim actions are warranted.
2. Identify potential policy violations, key issues, and the scope of investigation in order to develop the investigation strategy and outline a proposed timeline.

Either party may choose not to participate in the investigation (see 3.7 and 3.8); however, the investigation will proceed as necessary and the finding will be based on all the available evidence. The non-participating party will retain all rights in the process, but no appeals may then be based upon the failure of the non-participating party to provide information to the investigation, which was available at the time of the investigation.

Once the investigators have interviewed the claimant, the responding party, and any witnesses and have evaluated and weighed the available evidence, they will review their investigation with the Investigative Administrator who will determine if the investigation material represents a thorough, reliable, and impartial investigation. The Investigative Administrator will then provide the approval for the investigators to write an investigative report based on the factual evidence gathered and analyze the evidence to determine, by the preponderance of evidence (“more likely than not”) standard, that the responding party is either responsible or not responsible for the alleged policy violation(s). If the responding party is found responsible, the investigation report will also include a recommended range of sanctions that will stop the behavior, prevent its recurrence, and remedy the situation for the claimant and the community.

4.7 Post-Investigation Procedures

1. The Investigative Administrator will review the investigative report along with all information from the investigative file including, but not

limited to, witness statements, communications, documents, and other evidence to verify that the investigation was thorough, reliable, fair, and impartial.

- If the Investigative Administrator believes additional investigative measures are needed, they will send the investigative file back to the investigator(s) for further work.
 - If the Investigative Administrator determines that the investigation was conducted in a thorough, reliable, and impartial manner and consistent with the College’s policies and procedures, they will send the investigative file along to the Investigative Review Committee.
2. The Investigative Review Committee (see 4.3) will review the investigative report along with the recommended range of sanctions and all information from the investigative file including, but not limited to, witness statements, communications, documents, and other evidence to verify that the investigation was thorough, reliable, fair, and impartial. The names of the claimant, responding party, and any witnesses, will be redacted from the report sent to the Investigative Review Committee but relevant power and departmental relationships will be noted in the report.
 - If the respondent has filed counter charges against the claimant, the IRC should review both investigative reports simultaneously. If the Investigative Review Committee believes additional investigative measures are needed, they will send the investigative file back to the investigator(s) for further work.
 - If the Investigative Review Committee upholds the Investigative Administrator’s determination that the investigation was conducted in a thorough, reliable, and impartial manner and consistent with the College’s policies and procedures, appointments will be set with both the claimant and responding party to share the findings and recommended range of sanctions.
 3. The appropriate senior staff member, the Investigative Administrator, and the investigator(s) will meet with each party separately to share the findings of the investigation.
 - The investigator(s) will walk each party through their investigation in detail including what they learned from each party, from the witnesses, and from the evidence provided, and will outline the process they used to weigh all the materials (statements, evidence, etc), their analysis, and their final finding and recommended range of sanctions.
 4. If the responding party is found not responsible, the case is closed; either party may appeal this decision (see 4.9).

5. If the responding party is found responsible, the case is moved along for sanctioning (see 4.8).
 - If the recommended range of sanctions does not include separation from the College (expulsion, suspension, termination, or dismissal), the procedures outlined in 4.8.a will be followed.
 - If the recommended range of sanctions does include separation from the college (expulsion, suspension, termination, or dismissal), the procedures outlined in 4.8.b will be followed.

4.8 Sanctions & Sanctioning Panels

● Students

The sanctions may include:

- Suspended conduct probation. Under suspended conduct probation, any further violation could result in conduct probation or a more severe penalty.
- Conduct probation. Conduct probation may prohibit student participation in campus activities, such as extra-curricular activities, public performances, public office in student organizations, or participation in commencement or other official ceremonies. If the student does not comply with the terms of conduct probation, other sanctions may apply.
- Suspension from the College, with reinstatement dependent upon the fulfillment of stipulated conditions.
- Dismissal from the College.
- Sanctions may also include written warnings, mandatory participation in educational programs, restitution, or other actions appropriate to the offense.

● Employees

Sanctions may include:

- Oral or written reprimand
- Transfer to a different area or other work restrictions
- Required training
- Demotion or reduction in pay
- Probation, restitution, or other actions appropriate to the offense
- Separation from the College

Sanctions related to behavior involving sex or gender harassment, discrimination, or misconduct must act to end the behavior, prevent its recurrence, and remedy its effect on the claimant and the community.

- a. For instances that **do not** involve separation from the College, the appropriate senior staff member (see 4.2) will determine the final sanction.
- b. For instances that **do** involve a recommended range of sanctions that does include separation from the College, the process noted below will determine the sanction.

i. For students

The Council on Student Affairs is the official body delegated to decide sanctions when suspension or dismissal is within the recommended range of sanctions.

The Council on Sexual Misconduct is a sanctioning board made up of members of the Council on Student Affairs convened for matters involving sex- or gender-based behaviors. The Dean of Students chairs the Council on Sexual Misconduct but does not vote. The Dean of Students moderates the proceedings and ensures that policy is followed. The Dean of Students will choose two students¹⁰ and two faculty members from the Council on Student Affairs and two non-entry level staff members at the College. The Council must be gender balanced.

All participants on the Council on Sexual Misconduct must satisfactorily complete the College's annual council training.

If not enough faculty and/or student members of the Council on Student Affairs are able to serve, the Dean of Students will choose replacement faculty and student members who have previously been trained.

ii. For faculty

The procedures specified in the Faculty Code (Chapter 1, Article III, Section 5), shall be followed.

¹⁰Either party retains the right to veto having students serving on the hearing panel. If either party elects to have a panel without students, the Dean of Students will replace the students with one faculty member and one staff member.

iii. For non-faculty employees

The appropriate senior staff member for non-faculty employees who are found responsible for a policy violation will determine the final sanction based on the investigation report, finding, and recommended range of sanctions.

4.9 Appeal Process

Either the claimant or the responding party may make an appeal request following the final determination (when the College deems the case closed). Appeals are not to be considered as “seeking a second opinion,” rather, they are intended to allow the College to reconsider elements that may have impacted the original decision sufficient to impact the outcome of that decision. See the Faculty Code for appeal processes relative to faculty dismissal.

- The appeal, accompanied by a detailed description of the information supporting the specific appeal category, must be submitted in writing to the Chair of the Faculty within five (5) working days after being informed of the outcome.
- The appeal must be based on the following, and only the following criteria:
 1. New evidence unknown or unknowable at the time of the investigation that may substantially alter the outcome, or
 2. Substantial procedural error(s) that may alter the outcome, and/or
 3. The sanctions imposed fall outside the recommended range of sanctions.
- Appeal requests based solely on a person’s disagreement with the outcome of the investigation, a sanction-decision, or the outcome of the hearing does not meet the criteria for an appeal.
- All sanctions imposed will be in effect during the appeal process including, but not limited to suspension, removal from campus, or continued no-contact directives.
- The Chair of the Faculty, to whom the appeal is made, will act on the petition in one of three ways:
 1. May decide to consider the appeal and then rule
 2. May form a panel to review the appeal, or
 3. May reject the appeal request.
- The Chair of the Faculty is the appellate officer for the College in all grievance matters. If the Chair of the Faculty feels they cannot be

impartial or if the Chair of the Faculty has an immediate interest in a particular case, they will recuse themselves from the appeal and the most recent, and available, past-Chair will serve as the appellate officer.

- The Chair of the Faculty, in their role as appellate officer, may have access to the investigative report and any other materials related to the case in order to respond appropriately.
- Once an appeal request is considered appropriate for consideration, the other party and the Investigation team will be provided with a copy of that request and may submit information or a rebuttal (or, in the case of the other party – their own appeal) to the appeal request to be considered by the appellate officer.

4.10 Timeline Estimates for Formal Process

The summary below is meant to provide a rough timeline of what to expect when moving through the reporting, investigation, and resolution process. Investigations will be conducted in reasonably prompt timeframes with a goal for resolution being 60 days from the initial report to the end of the sanctioning process. Certain issues such as the point in the semester when the incident is reported may result in prolonged investigations. For example, conducting interviews during breaks may be more challenging as students, faculty, or staff may be away. Every effort will be made to find resolution within the 60 day time frame. Should the incident also be being investigated by local law enforcement, the campus process need not wait for the outcome of the criminal justice system process before making a final determination.

Safety Precautions

For grievances involving harassment, discrimination, or violence, Whitman College will take **immediate** interim measures to ensure the safety of the individual and campus community. Likewise, the College will take steps to offer the claimant interim options for support and remedy. These may include things such as issuing a timely warning statement or no-contact orders, offering a change of housing, offering counseling services, etc.

Investigations

The length of the investigation will vary widely based on the situation. Investigations will involve meeting with the individuals involved, taking statements, reviewing and gathering any other evidence (documentary, physical, etc.), talking with witnesses, collaborating statements, meeting with college personnel, etc. This process will start **immediately** upon receiving a complaint. The College’s goal is to be extremely thorough in gathering information so this process may take several weeks.

Sanctioning Hearing

For students, hearings will be scheduled providing at least a **two-day notice**. This will allow the responding party time to review the investigative summary and prepare their statement.

Notification of Outcome

Once a sanction has been finalized, the appropriate senior staff member will notify the claimant and the responding party of the outcome either in person or in writing within **two working days**.

Appeals

Appeals must be submitted in writing **within five (5) working days** of notification of outcome. Ideally, the Chair of the Faculty will decide **within three (3) working days** of an appeal request if the appeal will be considered. If an appeal request is granted, the other party and the Investigation team will be provided with a copy of that request and may submit information or a rebuttal (or, in the case of the other party – their own appeal) to the appeal request to be considered by the appellate officer **within five (5) working days**. Both the claimant and the responding party have one appeal opportunity.

Notification of Appeal Outcome

Once a determination is made, the Appellate Officer will notify the claimant and the responding party of the outcome either in person or in writing within **two working days**.

5. RIGHTS OF THE CLAIMANT AND RESPONDING PARTY

Whitman College supports the following rights of claimants and responding party:

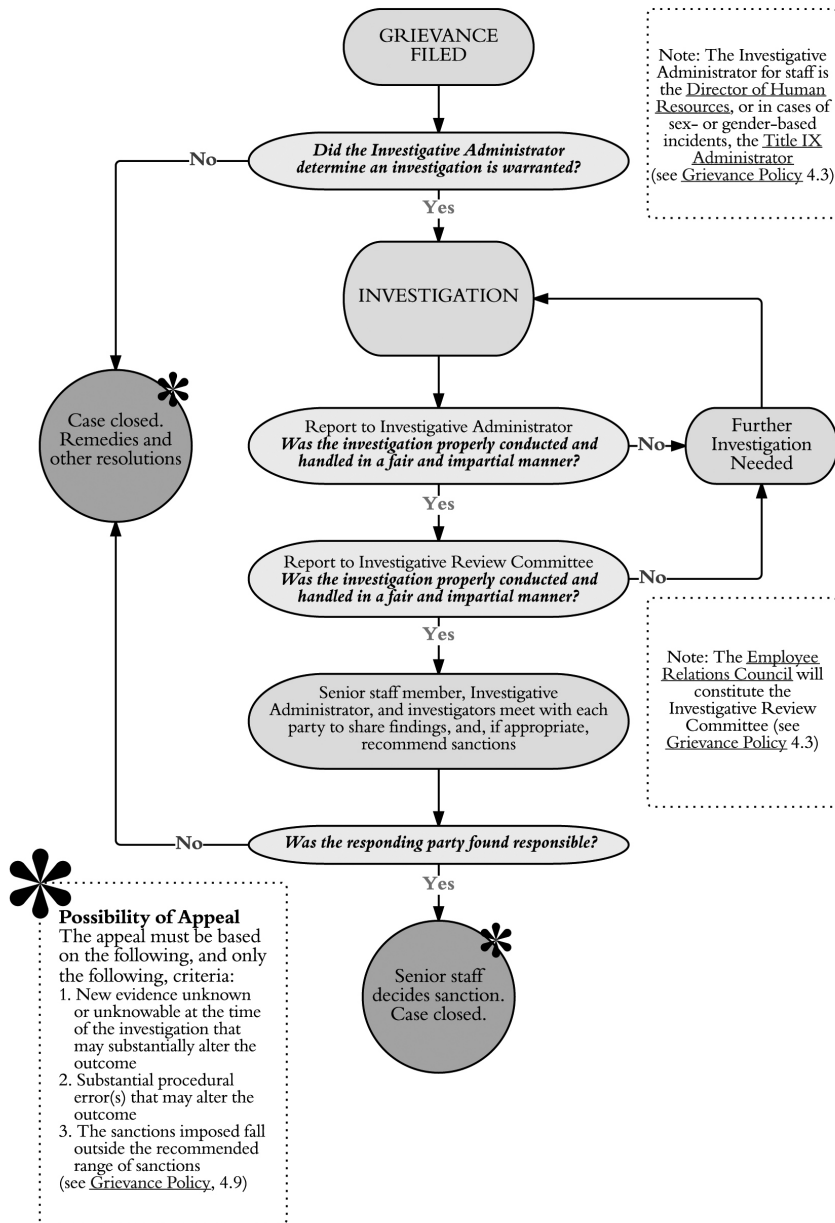
- Individuals have a right to file a complaint with the police or other agencies; the College will provide assistance reporting to law enforcement officials or other appropriate resources if they wish to take legal action off campus.
- Persons involved in a grievance process have the right to a prompt investigation and resolution of the complaint.
- The claimant and responding party have the right to have an adviser who will help them as they go through the investigation and adjudication process and prepare for the hearing if necessary.
- Individuals have a right to a safe environment – the College will take whatever measures it deems reasonable and feasible to protect the safety of the campus community.

- Persons involved in a grievance process will be treated with dignity, respect, and fairness.
- Persons involved in a grievance process have a right to fair and impartial investigation and adjudication procedures, including academic due process.
- The College will treat all complaints seriously and will impartially investigate allegations of misconduct or policy violation.
- Employees and students involved in a complaint will have full access to campus services designed to assist in such cases, including, but not limited to the Dean of Students Office, Human Resources, the Victim's Advocate (for instances of sex- or gender-based harassment, discrimination, or violence), the Provost and Dean of the Faculty Office. Students also have access to the Counseling Center and Health Center.
- The College respects the privacy of claimants and responding party. Information gathered in an investigation will not be disclosed to others who do not have a legitimate need to know.
- Individuals may consult an attorney; however, the College's investigations, hearings, and appeal processes are not intended to parallel courtroom proceedings.
- The College will not tolerate any form of harassment, retaliation, and/or intimidation of the claimant or the responding party, or of those supporting either party. Any retaliatory action taken against a claimant or responding party or against their friends, acquaintances, or other persons cooperating in a college investigation is a violation of college policy.

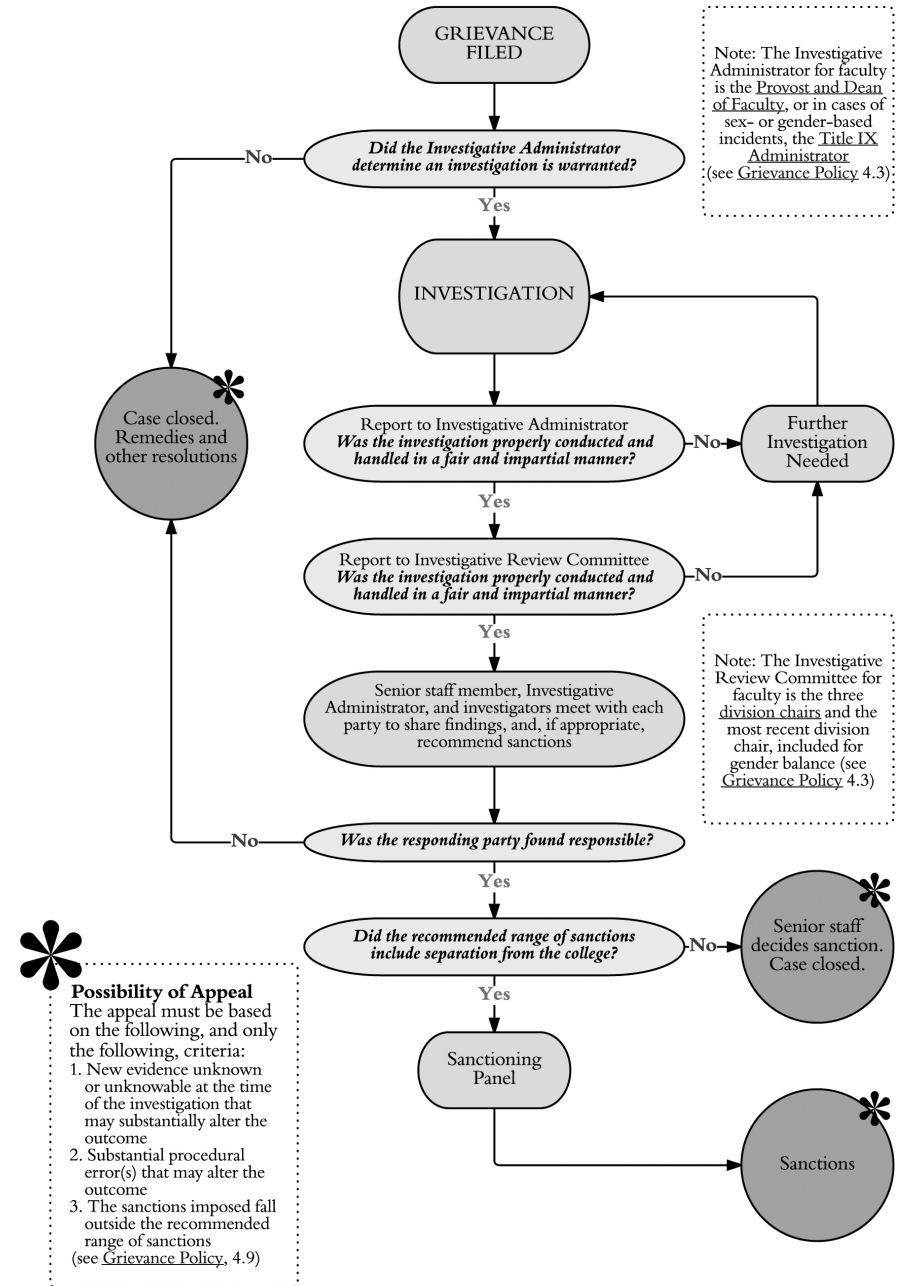
Students or Employees who believe their complaint of harassment or discrimination has not been adequately addressed through the College's grievance process may submit a grievance to either the Washington State Department of Labor and Industries, the Equal Employment Opportunity Commission, or the Office for Civil Rights.

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| The Office for Civil Rights Seattle Office 915 Second Ave., Room 3310 Seattle, WA 98174-1099 (206) 607-1600 OCR.Seattle@ed.gov | Washington State Dept. of Labor and Industries P.O. Box 44000 Olympia, WA 98504-4000 (866) 219-7321 | Equal Employment Opportunity Commission Federal Office Building 909 First Avenue Suite 400 Seattle, WA 98104-1061 (800) 669-4000 |
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STAFF GRIEVANCE PROCESS



FACULTY GRIEVANCE PROCESS



STUDENT GRIEVANCE PROCESS

