



## TITLE IX POLICY

### \*\*INTERIM POLICY\*\*

#### **I. Policy Statement & Scope**

##### **A. What is the purpose of the Title IX Policy?**

Title IX of the Education Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The United States Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment that interfere with a student or employee's ability to equally access our educational programs and opportunities.

On May 19, 2020, the United States Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment"
- Addresses how WPI **must** respond to reports of conduct falling within that definition of sexual harassment, and
- Mandates a grievance process that WPI **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

*See*, 85 Fed. Reg. 30026 (May 19, 2020) (the "Final Rule"). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>.

As required by the Final Rule, WPI will implement the following Title IX Policy, effective August 14, 2020.

##### **B. How does the Title IX Policy impact other campus disciplinary policies?**

In recent years, "Title IX" cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, WPI must narrow both the geographic scope of its authority to act under Title IX and the types of "sexual harassment" that it must subject to its Title IX investigation and adjudication process. ***Only*** incidents falling within the Final Rule's definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Policy defined below.



WPI remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

Specifically, our campus has a [Student Code of Conduct](#) that defines certain behavior as a violation of campus policy, and a separate [Sexual Misconduct Policy](#) that addresses the types of sex-based offenses constituting a violation of campus policy, and the procedures for investigating and adjudicating those sex-based offenses. Note: WPI's [Sexual Misconduct Policy](#) only governs how WPI responds to violations falling outside Title IX's jurisdiction, defined below.

To the extent that alleged misconduct falls outside the Title IX Policy, or misconduct falling outside the Title IX Policy is discovered in the course of investigating covered Title IX sexual harassment, WPI retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the [Student Code of Conduct](#) and the [Sexual Misconduct Policy](#) through a separate grievance proceeding.

The elements established in the Title IX Policy under the Final Rule have no effect and are not transferable to any other WPI policy for any violation of the Student Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Title IX Policy. This Title IX Policy does not set a precedent for other WPI policies or processes and may not be cited for or against any right or aspect of any other policy or process.

### **C. How does the Title IX Policy impact the handling of complaints?**

Our existing Title IX Office and reporting structure remains in place. What has changed is the way our Title IX Office will handle different types of reports arising from sexual misconduct, as detailed in full throughout Section III.

## **II. General Rules of Application**

### **A. Effective Date**

The Title IX Policy takes effect August 14, 2020, and will only apply to sexual harassment alleged to have occurred on or after August 14, 2020. Incidents of sexual harassment alleged to have occurred before August 14, 2020, will be investigated and adjudicated according to the process in place at the time the incident allegedly occurred.

### **B. Revocation by Operation of Law**



Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this Title IX Policy, this Title IX Policy, or the invalidated elements of this Title IX Policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Policy be revoked in this manner, any conduct covered under the Title IX Policy shall be investigated and adjudicated under WPI’s Sexual Misconduct Policy.

### **C. Non-Discrimination in Application**

The requirements and protections of this Title IX Policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or witness. Individuals who wish to file a complaint about WPI’s policy or process may contact the Department of Education’s Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

### **D. Disability Accommodations**

This Title IX Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX process that do not fundamentally alter the Process. The Title IX Coordinator will work with each of the parties and as applicable, the Office of Accessibility Services (for students) and/or the 504 Coordinator (for employees) to ensure that appropriate, reasonable, accommodations are available. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties and approved, even where the Parties may be receiving accommodations in other institutional programs and activities.

## **III. Definitions**

### **A. Title IX Sexual Harassment**

For the purposes of this Title IX Policy, “Title IX sexual harassment” includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee of WPI conditioning the provision of an aid, benefit, or service of WPI on participation in unwelcome sexual conduct (i.e., quid pro quo);



2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to WPI's education program or activity;
3. Sexual assault (as defined in the Clery Act at 20 U.S.C. 1092(f)(6)(A)(v)), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act at 34 U.S.C. 12291(a)(10)), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
5. Domestic violence (as defined in the VAWA amendments to the Clery Act at 34 U.S.C. 12291(a)(8)), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under Massachusetts domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Massachusetts.
6. Stalking (as defined in the VAWA amendments to the Clery Act at 34 U.S.C. 12291(a)(30)), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited under WPI's Sexual Misconduct Policy.

## **B. Consent**

### *1. What is consent?*

Consent is the positive, unambiguous, and voluntary agreement to engage in specific sexual activity throughout a sexual encounter. Consent must be an informed, deliberate and voluntary decision to engage in mutually acceptable sexual activity. It is the responsibility of the person who initiates sexual activity to make sure consent is received from any other person(s) involved. WPI recognizes that there are a wide variety of sexual interactions, that there is no single way to communicate consent, and that context matters. At all times, each party is free to choose where,



when, and how they participate in sexual activity. Accordingly, when evaluating whether sexual activity was consensual, WPI will consider the entirety of the sexual interaction and the relevant circumstances.

Consent is active not passive. Individuals should be able to clearly articulate why and how they believed they received consent and what they considered to be indications of consent as they engaged in sexual activity. Consent must be received for each sexual act. It is important to remember:

- Consent to one sexual act does not constitute or imply consent to another act.
- Previous consent does not imply consent to future sexual activity.
- Consent cannot be assumed based on the parties' relationship or sexual history.
- Consent can be withdrawn at any time before or during sexual activity.

## 2. *What is Not Consent?*

Consent may not be inferred from silence, passivity or a lack of objection. The absence of a negative response, such as silence or a failure to resist, does not equal consent. Some behaviors and comments that do not indicate affirmative consent include but are not limited to:

- "I don't know"
- "Maybe"
- A head shake
- Lack of objection
- Not fighting back
- A verbal "no" that may sound indecisive or insincere

## 3. *Consent Can Never Be Given By:*

- Someone who is incapacitated. It is a violation of this Policy to engage in sexual activity with a person who an individual knew or should have known was incapacitated. A person can be incapacitated through the use of drugs, alcohol or any other intoxicating substance, medications or when they are unconscious, asleep or otherwise unaware that sexual activity is occurring.
- Someone under the legal age of consent. The legal age of consent in the Commonwealth of Massachusetts is sixteen (16).
- Someone who is mentally disabled or cognitively impaired. It is a violation of this Policy to engage in sexual activity with a person whose mental disability or cognitive impairment renders them incapable of giving consent and the disability/impairment is known or should have been known to the non-disabled sexual partner.

## 4. *Consent and the Use of Alcohol or Drugs:*

The use of alcohol or drugs does not relieve an individual of the obligation to obtain consent before initiating and/or engaging in sexual activity.

## **E. Education Program or Activity**



For the purposes of this Title IX Policy, WPI’s “education program or activity” includes:

- Any on-campus premises.
- Any off-campus premises that WPI has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of WPI’s programs and activities over which the WPI has substantial control.

#### **F. Formal Complaint**

For the purposes of this Title IX Policy, “formal complaint” means a document – including an electronic submission - filed by a Complainant with a signature or other indication that the Complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a Respondent about conduct within WPI’s education program or activity and requesting initiation of the procedures consistent with the Title IX Policy to investigate the allegation of sexual harassment. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of WPI, including as an employee.

#### **G. Complainant**

For the purposes of this Title IX Policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute Title IX Sexual Harassment as defined under this policy.

#### **H. Relevant evidence and questions**

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX process:

- Evidence and questions about the Complainant’s sexual predisposition or prior sexual behavior unless:
  - They are offered to prove that someone other than the respondent committed the conduct alleged by the Complainant, or



- They concern specific incidents of the Complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

## **I. Respondent**

For the purposes of this Title IX Policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment as defined under this policy.

## **IV. Policy**

### **Obligations of Employees to Report Title IX Sexual Harassment**

#### **A. Responsible Employees**

All employees (except Confidential Resource Advisors; identified below) who learn of a violation of this Title IX Policy involving students are required to immediately report such information to the Title IX Coordinator or a Deputy Title IX Coordinator.

All supervisors (except Confidential Resource Advisors) who learn of a violation of this Title IX Policy are required to immediately report such information to the Title IX Coordinator or Deputy Title IX Coordinator.

Employees will receive regular training in their duty to report Title IX Sexual Harassment.

#### **B. Confidential Resource Advisors**

The following employees, who will receive regular training, may serve as confidential advisors for students and are not required to report violations of this Title IX Policy:

1. Employees of Student Health Services.
2. Employees of the Student Development and Counseling Center.
3. A chaplain or religious advisor working at WPI.
4. WPI Ombudspersons and any other individual with appropriate training who is specifically appointed by WPI for the purpose of serving as a confidential resource advisor.

### **Making a Report Regarding Title IX Sexual Harassment to WPI**



Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator or Deputy Title IX Coordinators [here](#), or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

Contact information for the Title IX Coordinator:

Jonathan Stewart  
100 Institute Road  
Worcester, Massachusetts 01609  
Office: Rm 234 Campus Center  
508-831-6514  
jstewartTitleIX@wpi.edu

In cases where the Title IX Coordinator has a conflict of interest, a Deputy Title IX Coordinator appointed by the President will serve in the Title IX Coordinator's role for the entirety of the process under this Title IX Policy.

In cases where allegations of Title IX Sexual Harassment have been brought against the Title IX Coordinator, the Vice President for Talent/Chief Diversity Officer, the Provost, or the President, then the process outlined in this Title IX Policy will be adjusted accordingly to avoid any conflicts of interest. Except in cases involving the President, the President shall resolve any questions of bias or conflict of interest of the Title IX Coordinator. The President's decision on such questions shall be final.

### **Non-Investigatory Measures Available Under the Title IX Policy**

#### **A. Supportive Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

As appropriate, supportive measures may include, but not be limited to:





- No-contact orders
- Deadline extensions
- Reassignment of housing
- Counseling
- Modifications of work or class schedules
- Campus escort services
- Changes in work locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus

*See* 85 Fed. Reg. 30401.

Within five (5) business days of receiving such a report, the Title IX Coordinator or their designee<sup>1</sup> will take several initial steps, including, but are not limited to, the following:

1. Encouraging the Complainant to meet with the Title IX Coordinator to discuss the nature and circumstances of the reported conduct. If the person who has reported the alleged sexual harassment is not the person who has experienced the sexual harassment, then the person who has made the report will have the opportunity to meet with the Title IX Coordinator to discuss the nature and circumstances of the reported conduct.
2. Discussing the availability of supportive measures for the Complainant, consider the Complainant's wishes with respect to supportive measures, and inform the Complainant of the availability of supportive measures with or without filing a formal complaint.
3. Notifying the Complainant about their rights and options under this Title IX Policy, including the right to report and the right to decline to report the matter to Campus Police and/or to local law enforcement, the options and process for filing a Formal Complaint at WPI, and the availability of medical treatment, counseling, and other resources, both on and off campus.

## **B. Resources Available in Cases of Title IX Sexual Harassment**

Anyone who has experienced Title IX Sexual Harassment or is aware of someone who may have been the victim of Title IX Sexual Harassment is strongly encouraged to report such harassment and to take advantage of resources available on campus and in the community.

If you or someone you know has recently been the victim of Title IX Sexual Harassment:

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<sup>1</sup> As necessary and appropriate, the Title IX Coordinator may designate a Deputy Title IX Coordinator or another qualified person to assume the Title IX Coordinator's responsibilities under this Title IX Policy.



- Go to a safe place as soon as you can.
- In an emergency, call Campus Police at 508-831-5555, or 5555 from a campus phone or via a blue light phone on campus. If it is not an emergency, then call the WPI Police Department at 508-831-5433.
- Seek medical attention, if needed. The WPI Student Development and Counseling Center offers counseling appointments to all students. The Emergency Room at UMass Medical Center offers services and support for people who have experienced sexual harassment. WPI Police can provide students with an escort to the hospital.
- Try to preserve all physical evidence.

If you are the victim of a sexual assault, try not to wash your face or hands, bathe, brush your teeth, drink or eat, douche, or change clothes if you can avoid it. If you do change your clothes, put all clothing you were wearing at the time of the assault in individual paper bags (not plastic). It is important to preserve as much evidence as possible should you later decide to press criminal charges.

### **C. Emergency Removal**

WPI retains the authority to remove a Respondent from WPI's program or activity on an emergency basis, where WPI (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX Sexual Harassment justifies a removal.

If the Title IX Coordinator determines such removal is necessary, the Respondent will be provided notice and an opportunity to challenge the decision immediately following the removal by appealing to the President. The Respondent's emergency removal will not be stayed pending any appeal.

### **D. Administrative Leave**

WPI retains the authority to place a non-student employee Respondent on paid administrative leave at any time following the filing of a Formal Complaint.

## **The Title IX Grievance Process**

### **A. Filing a Formal Complaint**

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. WPI will endeavor to complete the investigation and disciplinary Judicial Panel process within 120 days of the delivery of the filing of a Formal Complaint. This period does not include the



time for any appeal. Timeframes set forth in this Title IX Policy may be extended for good cause including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below. WPI's overarching goal is that the process should be prompt, fair, and impartial.

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of WPI, including as an employee. For Complainants who do not meet this criteria, WPI will utilize existing policy in the Student Code of Conduct, the Sexual Misconduct Policy, or any other applicable policy.

If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary to address any risk of harm to the Complainant or other individuals in the community and based on the nature of the incident or conduct at issue. WPI will inform the complainant of this decision in writing, and the Complainant need not participate in the process further but will receive all notices issued under this Title IX Policy.

Nothing in the Title IX Policy (or any other WPI policy) prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

### **B. Optional Informal Resolution Process**

At any time prior to a determination regarding responsibility concerning a Formal Complaint, a Party may contact the Title IX Coordinator to request an informal resolution of a Formal Complaint. The informal resolution process is not available to resolve allegations that an employee sexually harassed a student.

All parties and the Title IX Coordinator must agree to informal resolution for this option to be used. If the Title IX Coordinator determines that informal resolution is appropriate, the Title IX Coordinator will provide the parties a written notice that details the allegations and the requirements of the informal resolution process and attempt to reach a resolution.

At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Title IX process. The Formal Complaint will be deemed resolved when the parties expressly agree to an outcome that is acceptable to them and is approved by the Title IX Coordinator in consultation with other appropriate administrators.

### **C. Multi-Party Situations**



WPI may consolidate Formal Complaints alleging Title IX Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Title IX Sexual Harassment arise out of the same facts or circumstances.

#### **D. Determining Jurisdiction for a Formal Complaint**

The Title IX Coordinator will determine if the instant Title IX Policy should apply to a Formal Complaint. The Title IX Policy will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred against a person in the United States;
3. The conduct is alleged to have occurred in WPI's education program or activity; and
4. The alleged conduct, if true, would constitute Title IX Sexual Harassment as defined in this Title IX Policy.

If all of the elements are met, WPI will investigate the allegations according to this Title IX Policy.

#### **E. Allegations Potentially Falling Under Two Policies**

If the alleged conduct, if true, includes conduct that would constitute Title IX Sexual Harassment and conduct that would not constitute Title IX Sexual Harassment, the Title IX Policy will be applied to investigation and adjudication of only the allegations that constitute Title IX Sexual Harassment.

#### **F. Mandatory Dismissal of a Formal Complaint**

If any one of these jurisdictional elements are not met, the Title IX Coordinator will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Policy. Each party may appeal this dismissal using the procedure outlined in "Appeals," below.

#### **G. Discretionary Dismissal of a Formal Complaint**

The Title IX Coordinator may dismiss a Formal Complaint brought under the Title IX Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;



- The Respondent is no longer enrolled or employed by WPI; or,
- If specific circumstances prevent WPI from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Each party may appeal a dismissal determination using the process set forth in “Appeals,” below.

#### **H. Notice of Dismissal of a Formal Complaint**

The Title IX Coordinator may determine that the reported conduct would not trigger this Title IX Policy for the mandatory or discretionary reasons set forth above. Upon reaching a decision that the Formal Complaint will be dismissed, WPI will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

#### **I. Referral to Another Conduct Process**

Upon dismissal for the purposes of Title IX, based on the information gathered, the Title IX Coordinator may also refer the reported conduct to the appropriate administrator or department for handling consistent with any other applicable WPI policy.

WPI retains discretion to utilize the Student Code of Conduct, the Sexual Misconduct Policy, or any other applicable WPI policy to determine if a violation of the Student Code of Conduct, the Sexual Misconduct Policy, or any other applicable WPI policy has occurred. If so, WPI will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and removal of the allegations to the appropriate conduct process.

#### **J. Notice of Allegations**

The Title IX Coordinator will draft and provide a Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur within ten business days after the institution receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified by their institutional email accounts if they are a student or employee, and by other reasonable means if they are neither.

WPI will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.



The Title IX Coordinator may determine that the Formal Complaint must be dismissed on the mandatory grounds identified above, and will issue a Notice of Dismissal as described above. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

### **K. Contents of Notice of Allegations**

The Notice of Allegations will include the following:

- Notice of WPI's Title IX Grievance Process and informal resolution process, and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting Title IX Sexual Harassment, and sufficient details known at the time the Notice of Allegations is issued, such as the identities of the parties involved in the incident, if known, including the Complainant; the conduct allegedly constituting Title IX Sexual Harassment; and the date and location of the alleged incident, if known.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the Respondent will have the opportunity to present evidence and respond to allegations of sexual harassment.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv);
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source, as required under 34 C.F.R. § 106.45(b)(5)(vi);
- A statement that any person who knowingly makes a false statement or knowingly submits false information – either explicitly or by omission – in connection with any part of the process will be subject to separate disciplinary action. A false or unfounded report or Formal Complaint of Title IX Sexual Harassment determined by WPI to have been made in bad faith and dishonesty is a serious offense. Such offenses will themselves be investigated under the appropriate WPI policy and may lead to disciplinary action, up to and including termination of employment or other affiliation with WPI. A report or Formal Complaint made in good faith is not considered false merely because the evidence does not ultimately support the allegation of violation of the Title IX Policy.



- A statement that the investigation and hearing is a neutral fact-gathering process. Although participation in the process is not required, the Complainant, the Respondent, and all witnesses are expected to participate in good faith in the process set forth in this Title IX Policy. Any person who knowingly interferes with the reporting, investigation, or resolution of matters under this Title IX Policy may be subject to separate and/or additional disciplinary action
- A statement concerning duties of promptness and care. Proceedings concerning Title IX Sexual Harassment often raise difficult issues for those making the allegations, for those who are the subject of the allegations, and for those responsible for reviewing the allegations. Review of the allegations should therefore be conducted promptly and with care and sensitivity.
- A statement on the duty of confidentiality. The University will administer any report or Formal Complaint of Title IX Sexual Harassment using the process described in this Title IX Policy while providing the utmost degree of privacy and confidentiality possible under the circumstances of each matter and as permitted by law. All participants in the process under this Title IX Policy are expected to maintain confidentiality to protect the privacy of all involved, to the extent possible and as permitted by law. Participants should keep in mind the affect that allegations can have on reputations, even if the allegations are not sustained by the proceedings. Any participant in the process set forth in this Title IX Policy who violates their duty of confidentiality may be subject to discipline under the appropriate WPI policy.

#### **L. Ongoing Notice**

If, in the course of an investigation, WPI decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations and are otherwise Title IX Sexual Harassment falling within this Title IX Policy, WPI will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

#### **M. Advisor of Choice and Participation of Advisor of Choice**

WPI will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.



WPI has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by a single advisor present during any investigative proceeding, including any related meeting, interview, or hearing. Any person may serve as an advisor, including an attorney.

Except where explicitly stated by this Policy, as consistent with the Final Rule, advisors may communicate with their advisee but may not speak or otherwise communicate on behalf of a party. Advisors are subject to the same confidentiality obligations applicable to others in attendance.

WPI will not intentionally schedule meetings or hearings on dates where the advisors for all parties are not available, provided that the advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

WPI's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this Policy, and WPI cannot agree to extensive delays solely to accommodate the schedule of an advisor. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. WPI will not be obligated to delay a meeting or hearing under this process more than five calendar (5) days due to the unavailability of an advisor, and may offer the party the opportunity to obtain a different advisor or utilize one provided by WPI at the hearing.

#### **N. Notice of Meetings and Interviews**

WPI will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

#### **O. Delays**

Each party may request a one-time delay in the Grievance Process of up to five calendar (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Director of Student Conduct, or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.





The Title IX Coordinator, shall have sole judgment to grant further pauses in the process.

## **Investigation**

### **A. General Rules of Investigation**

*Designation of Role of the Investigator:* The Title IX Coordinator shall designate at least one unbiased, qualified investigator(s)<sup>2</sup> to conduct a prompt, fair, and impartial investigation of the reported conduct and prepare a report of investigative findings (the “Investigative Report”). More than one investigator may be designated or the investigation may be conducted by the Title IX Coordinator. Investigator(s) need not be employees of WPI. The Title IX Coordinator will provide each of the parties with the name of the Investigator(s). As soon as possible, but no later than three (3) business days after delivery of the identity of the Investigator(s), the parties should inform the Title IX Coordinator (in writing) of any potential conflicts of interest about the selected Investigator(s). The Title IX Coordinator will consider the nature of the potential conflict and determine if a change is necessary.<sup>3</sup> The Title IX Coordinator’s decision regarding any conflicts regarding the investigator(s) is final.

*Nature of the Investigation:* The investigation will include separate interviews with the Complainant (unless that person chooses not to participate in the investigation), the Respondent, and any witnesses whom the Investigator(s) believe will provide necessary and relevant information. The investigation will include the review of documentation or other items relevant to the reported conduct.

*Identification of Potential Witnesses and Documentation:* The parties will have the opportunity to provide the Investigator(s) with written notice of the names and contact information of potential fact and expert witnesses with whom they would like the Investigator(s) to speak together with a brief explanation of how the persons, documents, and/or items are relevant to the reported conduct. The parties may also provide the Investigator(s) with any documentation or other inculpatory or exculpatory evidence, or questions they would like to be considered or posed to any witness or the other party. The Investigator(s) will exercise discretion in determining what information and questions to consider and which potential witnesses will be interviewed based on whether the information or witnesses are directly related to the allegations raised in the Formal Complaint.

*Participation in the Investigation:* WPI and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share

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<sup>2</sup> The investigator shall be deemed “qualified” if the individual has received training in conducting Title IX investigations and has the requisite professional experience to conduct the investigation.

<sup>3</sup> If a party raises an objection based on a potential conflict of interest involving the Title IX Coordinator serving as investigator, the role of the Title IX Coordinator in deciding about whether a conflict exists, and whether another investigator should be designated, will be assumed by the President.



their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from WPI and does not indicate responsibility.

Participation in the investigation (by providing information to the Investigator(s), responding to questions from the Investigator(s), responding to information provided by a party or a witness, etc.) is not required and the investigation may proceed even if a party or witness declines to participate. During the investigation, the parties will have an equal opportunity to participate.

*Investigation Prohibitions:*

- Except as may be considered relevant, as described below under “Hearing,” WPI will not gather or consider information related to either party’s sexual predisposition or prior sexual behavior with other persons except as relevant to the alleged violation, as determined in the sole discretion of the Investigator(s).
- WPI will not access, consider, or disclose medical records without a written consent from the party (or parent, if applicable) to whom the records belong or of whom the records include information.

*Coordination with Law Enforcement:* The Investigator or designee may contact any law enforcement agency that is conducting its own investigation to inform them that a WPI investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to WPI in its investigation. At the request of law enforcement, the Investigator may delay the investigation temporarily while an external law enforcement agency is gathering evidence. The Investigator will generally resume the investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.

## **B. Inspection and Review of Evidence**

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility;
2. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.



All parties must submit any evidence they would like the Investigator to consider prior to when the parties' time to inspect and review evidence begins. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

WPI will send the evidence made available for each party and each party's advisor, if any, to inspect and review through an electronic format or a hard copy. WPI is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format.

The parties will have ten (10) calendar days to inspect and review the evidence and submit a written response by email to the Investigator. The Investigator will consider the parties' written responses before completing the draft Investigative Report. The Parties may request a reasonable extension as their designated extension request.

WPI will provide copies of the parties' written responses to the Investigator to all parties and their advisors, if any. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

WPI will then provide the parties five (5) calendar days after the initial inspection and review of evidence, and before the Investigator completes their draft Investigative Report, to provide additional evidence in response to their inspection and review of the evidence, and then provide the parties five (5) calendar days to inspect, review, and respond to the other party's additional evidence through a written response to the Investigator. Those written responses will be disclosed to the parties. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020). After reviewing the submissions, if any, from the parties, the Title IX Coordinator may determine that additional investigation is required, in which case the Investigator will conduct additional investigation prior to drafting the draft Investigative Report.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

### **C. Disclosure of Evidence Not Directly Related to the Allegations**

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their advisors, if any. See, 85 Fed. Reg. 30026, 30438 (May 19, 2020).



#### **D. Investigative Report**

After the investigation, the Investigator(s) will deliver a draft Investigative Report to the Title IX Coordinator. The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence. The Investigative Report should include a description of the alleged sexual harassment, and a summary of the information presented during the Investigation Phase including a section where the Investigator(s) point out relevant consistencies or inconsistencies (if any) between different sources of information. Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report. The Investigative Report will not include a recommendation or a determination as to whether a party has violated the Title IX Policy or what sanctions may be appropriate. These determinations will be made by the Judicial Panel, as described below.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant. See, 85 Fed. Reg. 30026, 30304 (May 19, 2020).

Within five (5) business days of receiving the draft Investigative Report, the Title IX Coordinator will provide each party with a copy of the draft Investigative Report in an electronic format or a hard copy for each party's review and written response. Each party will have an opportunity to submit written comments to the Title IX Coordinator about the draft Investigative Report within five (5) calendar days of receiving the draft Investigative Report. The time to submit written comments may be extended if the Title IX Coordinator concludes, in his/her sole discretion, that additional time is warranted.

After reviewing the submissions, if any, from the parties, the Title IX Coordinator may determine that additional investigation is required, in which case the Investigator will supplement the draft Investigative Report, and the parties will have the opportunity to inspect and review any evidence obtained during the additional investigation pursuant to Section B, above, before the Investigator submits a final Investigative Report to the Title IX Coordinator.

Any submissions made by either party in response to the draft Investigative Report, as well as any other documentation deemed relevant by the Investigator(s), will be attached to the final Investigative Report.

Within three (3) business days of receiving the final Investigative Report, the Title IX Coordinator will provide each party with a copy of the final Investigative Report. The Investigator will provide the final Investigative Report to the parties at least ten (10) business



days prior the hearing in an electronic format or a hard copy for each party’s review and written response.

## **Hearing**

### **A. Live Hearing Required**

WPI will not issue a disciplinary sanction arising from an allegation of Title IX Sexual Harassment without holding a live hearing or unless otherwise resolved through an informal resolution process.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at WPI’s discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through Zoom or other similar technology. This technology will enable participants simultaneously to see and hear each other. At its discretion, WPI may delay or adjourn a hearing based on technological errors not within a party’s control.

All proceedings will be recorded through audio recording, audiovisual recording, or transcript, as applicable. That recording or transcript will be made available to the parties for inspection and review.

The parties are not permitted to make any personal video, audio, or other electronic, photographic, or digital recordings of any meetings or proceedings held under this Title IX Policy. The Title IX Coordinator may make exceptions to this prohibition in limited circumstances if he or she concludes, in his or her sole discretion, that a recording is warranted, and upon written request of the party seeking the recording that explains the need for the recording.

Prior to obtaining access to any hearing recording, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

### **B. Convening the Judicial Panel**

The Title IX Coordinator will convene a five-member Judicial Panel (the “Judicial Panel”) from a previously established pool of WPI faculty members elected by the Faculty to the Campus Hearing Board, staff members and students trained to hear Title IX Sexual Harassment cases under this Title IX Policy. The process for selecting staff members and students for the pool and the training



process for all members of the pool is set by the Title IX Coordinator in collaboration with the Dean of Students Office, the Secretary of the Faculty, and the Human Resources Department.

The Title IX Coordinator will provide the parties with the names of the persons assigned as the Judicial Panel members for their case.

- No member of the Judicial Panel will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the Judicial Panel serve as the Appellate Officer in the case.
- No member of the Judicial Panel will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- To the maximum extent practicable, steps should be taken to ensure an impartial and unbiased hearing process, including participation of persons (including investigators) who: (1) have sufficient qualifications and training to carry out a thorough evaluation of the relevant information; and (2) have no unresolved personal, professional, or financial conflicts of interest with those involved with the inquiry or investigation that could affect their ability to be objective reviewers.

As soon as possible, but no later than three (3) business days after delivery of the identity of the assigned Judicial Panel members, the parties should inform the Title IX Coordinator in writing of any conflicts of interest regarding the members assigned to the Judicial Panel. If a conflict of interest is raised regarding any of the individuals assigned to the Judicial Panel, the Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned to the Judicial Panel. The Title IX Coordinator should consult with other WPI personnel (and shall collaborate with the Secretary of the Faculty with respect to a proposed Judicial Panel member who is a faculty member) to assess any conflicts of interest. The Title IX Coordinator's decision (in appropriate collaboration with the Secretary of the Faculty) regarding any conflicts is final. The Title IX Coordinator will then submit the Investigative Report to the Judicial Panel members.

### **C. Training Members of the Judicial Panel**

Proper training is a vital aspect of the integrity of the judicial process. Therefore, all members of the Judicial Panel shall receive appropriate orientation and training, in keeping with applicable law and national best practices. Training and orientation shall be overseen and approved by the Title IX Coordinator. The Judicial Panel will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Complainants, and any technology to be used at the hearing.

### **D. Scheduling the Hearing**



The Title IX Coordinator shall schedule date(s) for a hearing in consultation with all parties and members of the Judicial Panel.

### **E. Participants in the live hearing**

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

#### *Complainant and Respondent (The Parties)*

- The parties cannot waive the right to a live hearing.
- WPI may still proceed with the live hearing in the absence of a party, and the Judicial Panel may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a “statement” by that party. 85 Fed. Reg. 30026, 30361 (May 19, 2020).
- For example, a verbal or written statement constituting part or all of the Title IX Sexual Harassment itself is not a “prior statement” that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint. See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>
- WPI will not threaten, coerce, intimidate or discriminate against a party in an attempt to secure the party’s participation at the hearing.
- If a party does not submit to cross-examination, the Judicial Panel cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a “statement” by that party.
- The Judicial Panel cannot draw an inference about the determination regarding responsibility based solely on a party’s absence from the live hearing or refusal to answer cross examination or other questions.

#### *The Decision-Maker (The Judicial Panel)*

- The hearing body will consist of the Judicial Panel, duly convened by the Title IX Coordinator.
- The Judicial Panel will obtain the Investigative Report from the Title IX Coordinator.



- The Judicial Panel, in its discretion, may request to speak with any individual identified in the Investigative Report as well as any other individual with relevant information including, the parties, the Investigator, and individuals identified by the parties.

#### *Advisor of Choice*

- Each party may have a single advisor present during any hearing. The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- Each party must provide the name and contact information of their advisor to the Title IX Coordinator within five (5) business days of the hearing.
- The parties are not permitted to conduct cross-examination themselves; it must be conducted by the advisor. As a result, if a party does not select an advisor, WPI will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- Advisors may communicate with their advisee and conduct cross-examination, but may not may not speak or otherwise communicate on behalf of a party. The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. 85 Fed. Reg. 30026, 30340 (May 19, 2020).
- If neither a party nor their advisor appear at the hearing, WPI will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).
- Advisors are subject to the same confidentiality obligations applicable to others in attendance at the hearing.

#### *Witnesses*

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).
- If a witness does not submit to cross-examination, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing. 85 Fed. Reg. 30026, 30347 (May 19, 2020).

## **F. Hearing Procedures**





For all hearings conducted under this Title IX Policy, the procedure will be as follows:

- The Chair of the Judicial Panel will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- The Judicial Panel will ask questions of the Parties and witnesses;
- The Parties' Advisors will be given the opportunity for live cross-examination after the Judicial Panel conducts its initial round of questioning of a Party or witness;
- During the Parties' cross-examination, the Judicial Panel will have the authority to pause cross-examination at any time for the purposes of asking the Judicial Panel's own follow up questions; and any time necessary in order to enforce the Judicial Panel Hearing Guidelines.
- Should the Party's Advisor choose not to cross-examine a Party or witness, the Party shall affirmatively waive cross-examination through an oral statement to the Judicial Panel. A Party's waiver of cross-examination does not eliminate the ability of the Judicial Panel to use statements made by the Party or witness who the Party did not subject to cross-examination.

#### **G. Live Cross-Examination Procedure**

Each Party's advisor may conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the Chair of the Judicial Panel will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Judicial Panel may be deemed irrelevant if they have been asked and answered.

#### **H. Continuances or Granting Extensions**

WPI may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, WPI will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

#### **I. Newly-Discovered Evidence**



As a general rule, no new evidence or witnesses may be submitted during the live hearing and a witness who had the opportunity to participate during the Investigation but elected not to participate will not be permitted to participate in the hearing.

If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.

The Judicial Panel will consider this request for good cause shown and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly-discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

Exceptions of this nature are expected to be rare. The possibility of a law enforcement investigation or criminal court proceedings will generally not be considered good cause for an exception.

If the Judicial Panel answers in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness. The Judicial Panel may consider the fact that the evidence and documents were not provided during the investigation when determining the credibility of the information/evidence offered.

#### **J. Review of Transcript or Recording**

The recording or transcript of the hearing will be available for review by the parties within ten (10) business days after the hearing unless there are any extenuating circumstances. Copies of the recording or transcript of the hearing will not be provided to parties or advisors of choice.

### **Determination Regarding Responsibility**

#### **A. Standard of Proof**

WPI uses the preponderance of the evidence standard for investigations and all findings and determinations of responsibility of formal complaints covered under this Title IX Policy. This means that that it is more likely than not that a fact exists or a violation of the Title IX Policy occurred.

#### **B. General Considerations for Evaluating Testimony and Evidence**



While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Judicial Panel.

The Judicial Panel shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

The Judicial Panel will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Rule requires that WPI allow parties to call "expert witnesses" for direct and cross examination. While the expert witness will be allowed to testify and be crossed as required by the Final Rule, the Judicial Panel will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that WPI allow parties to call character witnesses to testify. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the Judicial Panel will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that WPI admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-



academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the Judicial Panel will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Judicial Panel may draw an adverse inference as to that party or witness' credibility.

### **C. Judicial Panel's Decision**

The Judicial Panel will decide by majority vote, based on a preponderance of the evidence standard, whether the Respondent is responsible for violating this Title IX Policy, whether sanctions are appropriate and, if so, what those sanctions shall be, and whether any remedies will be provided by WPI to the Complainant, and what those remedies will be.

A finding of responsibility for Title IX Sexual Harassment under this Title IX Policy can result in a wide range of sanctions, depending on the circumstances of a particular case. When the Respondent is a student, examples of sanctions include community service, counseling, probation, suspension from residence hall, suspension from the university for one or more terms, expulsion from WPI. When the Respondent is a staff member or a faculty member, examples of sanctions include community service, counseling, probation, reassignment of duties, suspension with pay, suspension without pay, and termination of employment at WPI. In deciding an appropriate sanction, the Judicial Panel shall consider the following factors:

- A finding of responsibility for Title IX Sexual Harassment can result in a wide range of disciplinary sanctions, depending on the circumstances of a particular case;
- the impact of the Title IX Sexual Harassment on the person who experienced sexual harassment;
- the disciplinary history of the Respondent;
- any other mitigating or aggravating circumstances in order to reach a fair and appropriate resolution in each case.

A finding of responsibility for Title IX Sexual Harassment can result in a wide range of remedies for the Complainant designed to restore or preserve equal access to WPI's education program or activity. Remedies may include, but are not limited to, the examples of supportive measures described above.

### **D. Components of the Determination Regarding Responsibility**

The Judicial Panel should state the basis for its decisions in a document maintained with records relating to the case. Upon reaching a determination of responsibility by majority vote, the Judicial Panel will provide a written notification of its decision to the Title IX Coordinator– the Determination Regarding Responsibility.



The written Determination Regarding Responsibility will be issued simultaneously by the Title IX Coordinator to all parties through their institution email account, or other reasonable means as necessary. The Title IX Coordinator will also inform other WPI officials as necessary and appropriate.

The Determination Regarding Responsibility will include:

1. Identification of the allegations potentially constituting Title IX Sexual Harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding which section of the Title IX Policy, if any, the respondent has or has not violated.
5. For each allegation:
  - a. A statement of, and rationale for, a determination regarding responsibility;
  - b. A statement of, and rationale for, any disciplinary sanctions WPI imposes on the Respondent; and
  - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to WPI's education program or activity will be provided by WPI to the Complainant; and
6. WPI's procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in "Appeal").

#### **E. Timeline of Determination Regarding Responsibility**

If there are no extenuating circumstances, the determination regarding responsibility will be issued by WPI within ten (10) business days of the completion of the hearing.

#### **F. Finality**

The determination regarding responsibility becomes final either on the date that WPI provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires.



## **Appeals**

All appeals (Section “A”) and special appeals (Section “B”) should be delivered to the Title IX Coordinator who will transmit the appeal to the appropriate Appellate Officer.<sup>4</sup>

If the Respondent is a student, the Appellate Officer is the Vice President for Student Affairs. If the Respondent is a faculty member, the Appellate Officer is the Provost (unless the Respondent is a full-time faculty member who the Judicial Panel has determined should be dismissed or suspended and the special appeals process described in Section B, below is applied). If the Respondent is a staff member, the Appellate Officer is the Vice President for Talent/Chief Diversity Officer.

The Appellate Officer will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or serve on the Judicial Panel in the same matter. If potential bias or conflict of interest is raised by either party regarding the Appellate Officer, the President will consider the nature of the potential bias or conflict to assess any conflicts of interest and determine if a different individual should be assigned the role of Appellate Officer. The Appellate Officer shall not be involved in the appeal until the President has resolved any questions of conflict of interest.

### **A. Appeals Available to Either Party**

Within seven (7) business days following the delivery of the Judicial Panel’s Determination Regarding Responsibility or the Title IX Coordinator’s Notice of Dismissal, either Party may appeal, to the appropriate Appellate Officer: (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility or non-responsibility. To appeal, a party must submit their written appeal to the Title IX Coordinator within seven (7) business days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow WPI’s own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, Investigator(s), or Judicial Panel had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

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<sup>4</sup>All Appellate Officers, including the President and Board Chair, will receive Title IX training.



The submission of an appeal stays any sanctions for the pendency of an appeal. Supportive measures remain available during the pendency of the appeal.

The party submitting the appeal must set forth in detail the grounds for appeal and must identify or attach all materials to be considered in the appeal process. The Title IX Coordinator will provide a copy of the appeal submitted by one party to the other party, and the other party may submit any additional materials that they wish to have considered in the appeal process within seven (7) business days of receipt of the appeal.

If a party appeals, WPI will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Within fourteen (14) business days after receiving an appeal (including additional materials, if any), the Appellate Officer will decide the merits of the appeal. In deciding the appeal, the Appellate Officer should review evidence considered by the Judicial Panel and may also consult with the Investigator(s), the Judicial Panel, or any other individual that the Appellate Officer deems appropriate.<sup>5</sup> Outcome of the appeal will be provided in writing simultaneously to both parties, and include rationale for the decision. In a case where the Appellate Officer overturns a decision of the Judicial Panel, the Appellate Officer shall first consult with the Investigator(s), the Judicial Panel, and any other individual that the Appellate Officer deems appropriate.

The decisions concerning responsibility and sanction, if any, and reasoning of the Appellate Officer(s) will be provided in a written document and will be final, except for circumstances that permit a Special Appeal, as described below. The written document shall be maintained with records relating to the case.

The Appellate Officer will forward the written document to the Title IX Coordinator, and the Title IX Coordinator will inform the parties simultaneously of the outcome of the appeal by forwarding to them the Appellate Officer's written document.

### **B. Special Appeals with Respect to a Respondent who is a Full-Time Faculty Member Involving a Recommended Sanction of Dismissal or Suspension**

The following appeal process applies in two cases:

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<sup>5</sup> Because the President may have a role in the appellate process involving full time faculty members facing suspension or dismissal, the appellate officer shall not communicate with the President regarding a full-time faculty member's appeal.



1. As an additional method of appeal of a determination by a Judicial Panel that a Respondent who is a full-time faculty member should be dismissed or suspended; and
2. As an appeal of a determination by the Appellate Officer that a Respondent who is a full-time faculty member should be dismissed or suspended when that determination was made on appeal of a Judicial Panel's decision not to impose such sanctions on the Respondent.

Such appeals appeal will be subject to the following procedure:

In cases where the sanction of dismissal or suspension is imposed on the Respondent, the Respondent or Complainant may appeal the Determination Regarding Responsibility or decision from an appeal under Section A above to the President within fourteen days after the Title IX Officer notifies the parties of the Determination Regarding Responsibility or within fourteen days after the Appellate Officer imposes a sanction of suspension or dismissal on the appeal under Section A. The appeal to the President should state why the appealing party believes the Determination Regarding Responsibility or decision on the appeal under Section A was inappropriate. The appeal must also set forth in detail the grounds for appeal and must identify or attach all materials to be considered in the appeal process. The Title IX Coordinator will notify the non-appealing party when an appeal is filed and provide a copy of the appeal to the non-appealing party (even if that person has not declined to participate in the investigative and judicial case). Both parties may submit a written statement in support of, or challenging, the outcome and may submit any additional materials that they wish to have considered in the appeal process to the Title IX Coordinator within five days of receiving a copy of the appeal. The Title IX Coordinator will forward that response to the President.

Before the President decides the appeal, the President should consult with the previous Appellate Officer (if there were one) and the Secretary of the Faculty. The President should issue a decision within thirty (30) days of receiving the appeal. If the decision will take longer than thirty (30) days, the President should inform the parties of the additional time necessary to render a decision. The decisions on appeal, and reasoning of the President will be provided in a written document. The written document shall be maintained with records relating to the case.

The President will forward the written document to the Title IX Coordinator, and the Title IX Coordinator will inform the parties simultaneously of the outcome of the appeal by forwarding to them the President's written document.

If the President decides to impose a sanction of dismissal or suspension, the Respondent or the Complainant may appeal the sanction to the Board of Trustees within fourteen (14) days after the parties are notified of the President's decision. The Title IX Coordinator will notify the non-appealing party when an appeal to the Board is filed and provide a copy of the appeal to the non-appealing party (even if that person has not declined to participate in the investigative and judicial case). Both parties may submit a written statement in support of, or challenging, the outcome and may submit any additional materials that they wish to have considered in the appeal process to the Title IX Coordinator within five (5) days of receiving a copy of the appeal. The Title IX Coordinator will forward that response to the Chair of the Board.





If the Respondent or the Complainant appeals to the Board, the Chair of the Board, in collaboration with the Secretary of the Faculty, shall appoint a committee of five (5) faculty members who will make a recommendation regarding the sanction imposed. The faculty committee will have access to all written reports and materials relevant to the case. The faculty committee will summarize the basis for its recommendation in a written report to the Board Chair within thirty days. The Board Chair should issue a written decision within thirty (30) days of receiving the faculty committee's report. If the decision will take longer than thirty (30) days, the Board Chair should inform the parties of the additional time necessary to render a decision. The decision and reasoning of the Board Chair will be provided in a written document. The written document shall be maintained with records relating to the case. The Board Chair will forward the written decision document to the Title IX Coordinator, and the Title IX Coordinator will inform the parties simultaneously of the outcome of the appeal by forwarding to them the Board Chair's written document.

The Board Chair's decision shall be final.

### **Retaliation Prohibited**

WPI will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. Retaliation includes threatening, intimidating, harassing, or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy, such as seeking services, receiving supportive measures, and/or reporting sexual harassment or filing a formal complaint. Retaliation includes maliciously and purposefully interfering with, threatening, or damaging the academic and/or professional career of another individual before, during or after the investigation and resolution of a report of sexual harassment under this Policy in response to and/or on account of the report of sexual harassment. Retaliation also includes any charges filed against an individual



for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment. This provision only applies to reports made or information provided in good faith, even if the facts alleged in the report are determined not to be accurate.

Complaints alleging retaliation may be filed according to the Sexual Misconduct Policy, Student Code of Conduct, or other applicable WPI policy.

### **Additional Matters**

#### **A. Duty of Honesty**

Any person who knowingly makes a false statement or knowingly submits false information – either explicitly or by omission – in connection with any part of the Title IX process will be subject to separate disciplinary action. A false or unfounded report or Formal Complaint of Title IX Sexual Harassment determined by WPI have been made in bad faith and dishonesty is a serious offense. Such offenses will themselves be investigated under the appropriate WPI policy and may lead to disciplinary action, up to and including termination of employment or other affiliation with WPI. A report or Formal Complaint made in good faith is not considered false merely because the evidence does not ultimately support the allegation of violation of the Policy.

#### **B. Good Faith Participation by the Parties and Witnesses**

The investigation and hearing are a neutral fact-gathering process. Although participation in the process (providing information to the Investigator(s), responding to questions from the Investigator(s), responding to information provided by a party or a witness, participating in the hearing etc.) is not required, the Complainant, the Respondent, and all witnesses are expected to participate in good faith in the process set forth in this Title IX Policy, and they may be required by WPI to attend meetings related to the process. Any person who knowingly interferes with the reporting, investigation, or resolution of matters under this Title IX Policy may be subject to separate and/or additional disciplinary action

#### **C. Duties of Promptness and Care**

Proceedings concerning Title IX Sexual Harassment often raise difficult issues for those making the allegations, for those who are the subject of the allegations, and for those responsible for reviewing the allegations. Review of the allegations should therefore be conducted promptly and with care and sensitivity.



#### **D. Duty of Confidentiality**

The University will administer any report or formal complaint of Title IX Sexual Harassment using the process described in this Title IX Policy while providing the utmost degree of privacy and confidentiality possible under the circumstances of each matter and as permitted by law. All participants in the review process under this Title IX Policy are expected to maintain confidentiality to protect the privacy of all involved, to the extent possible and as permitted by law. Participants should keep in mind the affect that allegations can have on reputations, even if the allegations are not sustained by the proceedings. Any participant in the process set forth in this Title IX Policy who violates their duty of confidentiality may be subject to discipline under the appropriate WPI policy.

#### **E. Record Keeping**

The Title IX Coordinator should receive and maintain all records relating to proceedings under this Title IX Policy for a period of seven (7) years, including all notices to and from the parties, all reports of Investigators, all decisions by a Judicial Panel on responsibility, sanctions, and remedies, any recording of the hearing, all appeals by the parties, all decisions by Appellate Officers and others involved in the appeals process under this Title IX Policy, any informal resolutions and the results therefrom, and any actions – including any supportive measures – taken in response to a report or formal complaint of sexual harassment. The Title IX Coordinator will maintain all records under this Title IX Policy in accordance with 34 C.F.R. 106.45(10).

#### **F. Special Measures**

If there is no finding of Title IX Sexual Harassment, the University should make reasonable and practical efforts as appropriate to restore the reputation of the Respondent. Any such concerns by the Respondent should be directed to the Title IX coordinator for follow up with other administrators as appropriate.

#### **G. Information about Title IX**

Such information, including about filing a complaint with the Department of Education related to this Title IX Policy, may be obtained from the Office for Civil Rights at the United States Department of Education, 400 Maryland Avenue, SW Washington, DC 20202-1100; 800-421-3481 TDD: 800-877-8339; [OCR@ed.gov](mailto:OCR@ed.gov).

More information about Title IX at WPI may be found at <https://www.wpi.edu/offices/title-ix>.

#### **H. Evaluation**

The Title IX Coordinator shall annually evaluate the effectiveness of the Title IX Policy with respect to meeting the needs of Complainants and Respondents during the process.



V. **Questions**

If you have any questions regarding this policy, please contact the Title IX Coordinator at [jstewartTitleIX@wpi.edu](mailto:jstewartTitleIX@wpi.edu) or the Office of the General Counsel at [OGC@wpi.edu](mailto:OGC@wpi.edu).

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**Policy Sponsor:** Title IX Coordinator; General Counsel

**Responsible Department:** Title IX Office; Office of the General Counsel

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