

WORCESTER POLYTECHNIC INSTITUTE

SEXUAL MISCONDUCT COMPLAINT PROCEDURES: FACULTY

1. **Introduction and Applicability**

Sexual Misconduct. Sexual misconduct, also referred to in these Procedures as sexual harassment, has the meaning described in WPI's Sexual Misconduct Policy¹ (the "Policy") and is a form of unlawful sex discrimination that is prohibited by state and federal laws and/or the Policy. Worcester Polytechnic Institute ("WPI" or the "University") will employ the procedures outlined below to conduct an investigation into any complaint of sexual misconduct by a tenured, tenure-track, or continuing non-tenure track faculty member² that may constitute a violation of the Policy. If, after an investigation as outlined herein, it is determined that a violation of the Policy has occurred, the University will take immediate action to ensure its programs and activities remain free of sexual misconduct, including, where appropriate, suspension and termination from employment at WPI.

Confidentiality. The University will administer any complaint of sexual misconduct against a WPI faculty member using the process described below while providing the utmost degree of privacy and confidentiality possible under the circumstances of each matter and as permitted by law. Notwithstanding the foregoing, the University reserves the right to promptly and thoroughly investigate any complaint of sexual misconduct, including but not limited to speaking to relevant witnesses. Failure of any participant in an investigation process conducted under these Procedures to respect confidentiality, either during or after any investigation, may constitute retaliation and may subject the violator to discipline, including suspension or termination.

Retaliation Prohibited. Retaliation of any kind against any participant in an investigation or administration of a complaint of sexual misconduct will not be tolerated by the University. Complaints of retaliation arising from a person's participation in the processes outlined below will be handled in accordance with the investigation and discipline process provided in these Procedures and may result in discipline, up to and including suspension or termination.

University Title IX Coordinators. The University has designated the following individuals as having oversight responsibility for receiving complaints of and investigating allegations of sexual misconduct by a WPI faculty member in connection with a University program or activity:

¹ The University's Sexual Misconduct Policy is a sub-section of its policy on Equal Opportunity, Anti-Discrimination & Harassment and Sexual Harassment. (The term "sexual harassment" will be changed to "sexual misconduct" after this new policy for faculty procedures is approved.) Together, the university-wide Sexual Misconduct Policy and these Sexual Misconduct Complaint Procedures: Faculty replace the Sexual Harassment Policy previously published in the Faculty Handbook.

² Complaints of sexual misconduct by adjunct, visiting, and other non-tenure track professors or instructors will be addressed in accordance with procedures in the Employee Benefits and Policy Manual.

Title IX Coordinator

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2. Definitions

Complainant. The individual, department or entity bringing forth an allegation of sexual misconduct.

Respondent. The individual against whom an allegation of sexual misconduct is made.

3. Filing A Complaint of Sexual Misconduct

Although the circumstances of a particular situation may make it difficult to do so, any person who believes they have been subjected to sexual misconduct or harassment by a WPI faculty member in connection with a WPI program or activity is strongly encouraged to immediately and firmly inform the offender that their conduct is inappropriate and unwelcome and to immediately report the conduct to the individuals identified above as the Title IX Coordinator or Deputy Title IX Coordinators in order to initiate a complaint.

In order to facilitate a prompt and thorough investigation, the University will accept, review, and respond appropriately to all complaints involving allegations of sexual misconduct that are submitted within 180 calendar days of the most recent alleged misconduct. The Title IX Coordinator may waive this deadline in extenuating circumstances.

In addition, any University employee (faculty or staff) who has witnessed, or has information regarding, conduct that may constitute sexual misconduct by a WPI faculty member in connection with a WPI program or activity should immediately notify their supervisor. If disclosure to a supervisor is either inapplicable or impracticable, complaints or information should be brought to the attention of the Title IX Coordinator or any Deputy Title IX Coordinator.

Complaints should provide as much detail as possible including, where practicable, the following:

- name of person subjected to sexual misconduct;
- name of faculty member alleged to have engaged in sexual misconduct;
- information concerning the incident(s) at issue, including date(s), location(s), and any witness(es) to the incident(s); and
- detailed description of the incident(s) at issue.

Although a complaint alleging sexual misconduct may be initiated orally, in order for the complaint to be fairly administered and investigated by the University, the complaining person(s) (“Complainant”) will be asked to submit a written complaint, or authenticate a written complaint prepared by the Title IX Coordinator or other designated Deputy Title IX Coordinator containing the above information.

Where practicable and legally permissible, the University will keep the Complainant apprised of the progress and outcome of an investigation under these Procedures.

4. Initial Inquiry

- a. Within five days of receiving a complaint of sexual misconduct, sexual harassment, or other violation of the Policy by a member of the WPI faculty, the Title IX Coordinator or Deputy will determine whether the behavior alleged constitutes a violation of the Policy and is sufficiently credible and specific so that potential evidence of such misconduct may be identified. If the behavior constitutes a Policy violation and the complaint is sufficiently credible and specific, an inquiry will be conducted. At this time, the Title IX Coordinator or Deputy may inquire of the Complainant whether he or she wishes to engage in an informal resolution process and, if so, will initiate and oversee such informal resolution efforts. If such informal resolution efforts are declined or are unsuccessful, the Title IX Coordinator or Deputy will provide a written report to the Provost and initiate the investigation process outlined below.³ In no case where it has been alleged that non-consensual physical touching of a sexual nature has occurred – including rape, sexual assault, or attempts to commit rape or sexual assault – will the matter be referred to or otherwise handled through an informal resolution process.
- b. In situations where a Complainant has requested confidentiality and does not wish to go forward with a complaint or where WPI receives notice or allegations of sexual misconduct from third parties, the Title IX Coordinator or Deputy may determine that further inquiry is required and is empowered to contact and interview witnesses, including the alleged Respondent and, where appropriate, may enlist the aid of WPI

³ If the Provost is the Complainant or the Respondent, then the President shall perform the role of the Provost as described throughout this policy.

Campus Police. If, after such inquiry, the Title IX Coordinator or Deputy determines that there is sufficiently credible and specific evidence of a potential violation of the Policy, the Title IX Coordinator or Deputy shall provide the Provost with a written report identifying the allegations and basis for the determination that a potential violation of the policy has occurred, and an investigation will be conducted.

- c. In extraordinary circumstances, when the presence of the Respondent on campus or in class creates an impossible working/academic environment for the Complainant, the Provost may suspend Respondent or impose a temporary transfer or assignment of Respondent's duties. A suspension on this basis shall not result in a reduction of salary while an investigation is pending. The Complainant will be notified of any such interim measures.

5. Procedures for Formal Investigation

- a. Within five business days of receiving the determination by the Title IX Coordinator or Deputy that an investigation is warranted:
 1. The Provost, in consultation with the Secretary of the Faculty (SOF) and Chair of the Faculty Review Committee (FRC), will appoint a fact-finding committee ("the Committee") of five tenured faculty members who are unbiased in the investigation.⁴ In appointing such members, the Provost will look to elected members of the FRC and other tenured faculty members who are unbiased, impartial, and who add to the diversity of the Committee. The Committee shall elect its own chair who shall be responsible for determining the manner in which the witness interviews and other procedures will be conducted by the Committee. In most cases, the Committee will complete its investigation of a complaint within sixty (60) days of the Title IX Coordinator or Deputy's receipt of the complaint, subject to external factors such as the availability of the parties, Committee members, witnesses and other evidence, and whether proceedings concerning the same allegations are pending in another forum.
 2. The Title IX Coordinator or Deputy will forward a copy of the complaint (or report) to the faculty member(s) named in the allegation ("Respondent") along with a copy of these Procedures and the Policy and inform the Complainant that an investigation has been initiated in accordance with these Procedures.
 3. The Title IX Coordinator or Deputy will also notify Respondent that s/he may submit a written response to the allegations within ten business days of his/her receipt of the complaint (or report). Upon request, the Coordinator or Deputy may choose to grant additional time. The Complainant and the fact-finding Committee

⁴ The Title IX Coordinator will ensure that all Committee members are Title IX trained prior to commencement of the investigation. Faculty members who are unwilling to receive such training will not be eligible to serve as a Committee member.

will be provided with a copy of any written response submitted by Respondent to the complaint.⁵

- b. All parties involved in a formal investigation and any subsequent proceedings shall, to the extent possible, endeavor to maintain confidentiality regarding the allegations, evidence, proceedings, and the privacy interests of the persons involved.
- c. The Committee will be provided with all the information about the allegations and empowered to review relevant documents and interview witnesses. The Committee is not bound by rules of evidence and is specifically empowered to hear witnesses and review material evidence relevant to the allegations of sexual misconduct. The Committee will interview the Respondent and Complainant, and will provide each with the opportunity to identify potential witnesses who may provide relevant information and/or documentary evidence for consideration by the Committee. The Committee may, at its discretion, interview any such additional witnesses and/or review documentary evidence requested by the Respondent or Complainant. The Committee may also seek relevant information and evidence on its own initiative.
- d. The Committee will pursue all significant issues and leads developed during the investigation, including information concerning new instances or allegations of sexual misconduct or harassment, which may constitute a pattern of misconduct. The Committee will give Respondent written notice of any new instances or allegations of misconduct within a reasonable time of deciding to pursue or consider such allegations. The Committee is also entitled to consider information concerning any previous violations of the Policy by Respondent in making recommendations as to appropriate discipline.
- e. The Committee will maintain records of its fact-finding proceedings, including copies of materials submitted by all parties, documentary evidence considered by the Committee, and a written record or summary of its witness interviews.
- f. The Committee may seek assistance from WPI's legal counsel and/or the Vice President of Human Resources/Title IX Coordinator in conducting its investigation.
- g. During the Committee investigation process, the Respondent and/or Complainant may:
 - 1. Have an advisor or legal counsel to assist or support them through the Committee investigation process;
 - 2. Challenge the composition of the Committee, if s/he believes that one or more of its members is biased. The remaining members of the Committee shall determine whether bias exists and otherwise act to ensure its own credibility. The

⁵ In situations where an investigation is commenced on a Title IX Coordinator or Deputy Report, without a complainant, copies of a Respondent's response(s) and other submissions will be provided to the Title IX Coordinator and, where applicable, the Title IX Coordinator or Deputy may file submissions to the Committee

Committee shall request that the Chair of the FRC and the Secretary of the Faculty replace a committee member when appropriate;

3. Have a reasonable amount of time to prepare for the investigation consistent with the overall time constraints on the investigation process;
4. Have the opportunity to present a defense to the Committee, to present witnesses for interview by the Committee, and to respond to all allegations of misconduct. Complainant shall have the same opportunity to present his/her position and to respond to any defense(s) presented;
5. Elect not to provide testimony to the Committee;
6. Submit to the Committee written questions for the Committee to ask of any witness;
7. Request the Committee to consider certain evidence, including documents and witness testimony relevant to the issues before the Committee.
8. Once the investigation is completed, the Committee will prepare a written investigation report (the "Report") offering a judgment as to whether or not the preponderance of the evidence substantiates a finding that the Respondent has violated the Policy.⁶ A finding that the Respondent has violated the Policy requires a majority vote of the Committee. The Report will summarize the facts and analysis that support the Committee's conclusion, address the merits of any reasonable explanation or defense provided by Respondent, and include the vote of the Committee. If the Committee concludes that Respondent has violated the Policy, it shall recommend disciplinary action(s) to the Provost. The Report will normally be completed within 15 days of concluding the fact-finding portion of the investigation.

6. Final Findings

- a. The Committee will provide Respondent and Complainant with a draft copy of the Report prior to the time it is presented to the Provost.⁷ Within 15 days of receipt of the Report, the Respondent and Complainant may file an appeal or objection to the Report. Such appeals or objections must be in writing and state the reasons therefor. The Committee will prepare a Final Report that considers and includes the appeal(s) or objection(s) and any changes in the Committee's vote, finding, and recommendation. The Committee shall take into account any applicable privacy laws and regulations, including the Family Educational Rights and Privacy Act (FERPA), in preparing the Final Report.

⁶ Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

⁷ See footnote 3.

- b. The Committee shall transmit the Final Report to the Provost. The action of the Committee shall either be sustained by the Provost or the case returned to the Committee with the Provost's objections specified in writing. If the case is returned, the Committee shall reconsider, taking account of the stated objections and receiving new evidence as necessary. The Committee shall frame its reconsideration and communicate it in the same manner as before, including any change in the Committee's vote, finding, and recommendation. Only after study of the new report, and after consultation with the relevant Dean and Department Head, should the Provost make a final decision.
- c. If the Provost decides that termination and/or removal of tenure is appropriate, but if four members of the Committee do not support the decision, then both the Provost's written recommendation and the Committee's report will be submitted to the Board of Trustees for its decision on the disciplinary action – not the underlying finding of sexual misconduct or other violation. In this case, the Board will provide both the Respondent and the Complainant with 10 days to submit any additional relevant information. The Board will then review all materials received and any other relevant material submissions or information which the Board, in its discretion, may solicit from the Respondent or Complainant, the Provost, or the Title IX Coordinator. The Board will relay its decision to the Provost who will inform the Respondent and the Complainant. This shall be the final decision on the part of the University.
- d. The Provost shall promptly notify Respondent and Complainant in writing of the decision on misconduct and, if applicable, disciplinary action. This decision shall be final, subject to a limited right of appeal to the Board of Trustees as described below.

7. Review of Disciplinary Actions by the Board of Trustees⁸

If both the Committee and Provost recommend termination and removal of tenure, such disciplinary action – not the underlying finding of sexual misconduct or other violation – may be appealed to the Board. Such appeal must be in writing, state the reasons for appeal, and be submitted to the Board within ten (10) days of the date of Respondent's receipt of notice from the Provost of such disciplinary action. Complainant shall be notified of the facts of an appeal and shall also be entitled to make a submission to the Board and Provost within ten (10) days of the receipt of such notice.

The Provost will promptly transmit the final investigation report and his/her written recommendation to the Board of Trustees. The Board will review the final investigation report, the Provost's written recommendation, and any submission made by the Respondent and the Complainant relevant to the appeal, and any other relevant material submissions or information which the Board, in its discretion, may solicit from the Respondent or Complainant, the Provost, or the Title IX Coordinator. The Board will notify the Respondent, the Complainant, and the Provost of its decision in writing, which shall be the final decision on the part of the University.

⁸ This Review is extended only to cases involving a tenured faculty member.

8. Special Measures

Should the Provost find that the Respondent did not violate the Policy, the Provost and/or his/her designee will, as appropriate, undertake a good faith effort to restore the reputation of Respondent. Reasonable efforts will also be taken to protect the standing of the Complainant, unless the inquiry or investigation reveals that the Complainant acted in bad faith, in which case appropriate disciplinary action may be taken under applicable University policy.