

# **Wesley College**

## ***Title IX Policy***

**Updated: February 2015.**  
\*Please check back as updates continue

# **POLICY AND PROCEDURES: Equal Opportunity, Harassment and Nondiscrimination**

Wesley College affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All policies below are subject to resolution using the Wesley College's Equity Process. The Equity Process is applicable regardless of the status of the parties involved, who may be members or non-members of the campus community, students, student organizations, faculty, administrators and/or staff. The College reserves the right to act on incidents occurring on-campus or off-campus, when the off-campus conduct could have an on-campus impact or impact on the educational mission of the College.

Dean Wanda Anderson serves as the Title IX Campus Site Coordinator and oversees implementation of the College's policy on equal opportunity, harassment and nondiscrimination. Reports of discrimination, harassment and/or retaliation should be made to the Title IX Coordination Team promptly, but there is no time limitation on the filing of a complaint, as long as the accused individual remains subject to the College's jurisdiction. All reports are acted upon promptly while every effort is made by the College to preserve the privacy of reports. Reporting is addressed more specifically on [p. 12, Section 7](#). Reports of discrimination by a member of the Title IX Coordination Team should be reported to the College President, Dr. William Johnston at (302) 736-2508.

This policy applies to behaviors that take place on the campus, at college-sponsored events and may also apply off-campus and to actions online when the Title IX Coordination Team determines that the off-campus conduct affects a substantial Wesley College interest. A substantial Wesley College interest is defined to include:

- a) Any action that constitutes criminal offense as defined by federal or the State of Delaware law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the municipality where the College is located;
- b) Any situation where it appears that the accused individual may present a danger or threat to the health or safety of self or others;
- c) Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- d) Any situation that is detrimental to the educational interests of the College.

Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc. occurring completely outside of the University/College's control (e.g. not on Wesley College networks, websites or between Wesley College email accounts) will only be subject to this policy when those online behaviors can be shown to cause a substantial on-campus disruption. Otherwise, such communications are considered speech protected by the 1<sup>st</sup> Amendment.

Off-campus discriminatory or harassing speech by employees may be regulated by the College only when such speech is made in an employee's official or work-related capacity.

Inquiries about this policy and procedure may be made internally to Title IX Coordination Team:

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Campus Site Title IX Coordinator  
(302) 736- 2443  
Email: [Wanda.Anderson@wesley.edu](mailto:Wanda.Anderson@wesley.edu)

Dr. Karen Panunto  
Central Coordinator for Anti-Harassment  
(302) 736-2511  
Email: [Karen.panunto@wesley.edu](mailto:Karen.panunto@wesley.edu)

Melissa Elliott  
Central Coordinator for Student Conduct and Sexual Assault  
(302) 736- 2586  
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Tracey Short  
Central Coordinator for Athletic Compliance  
(302) 736-2535  
Email: [Tracey.Short@wesley.edu](mailto:Tracey.Short@wesley.edu)

Natasha Wattenbarger  
Central Coordinator Hostile Environment  
(302) 736-2333  
Email: [Natasha.Wattenbarger@wesley.edu](mailto:Natasha.Wattenbarger@wesley.edu)

Inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100?  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

Equal Employment Opportunity Commission (EEOC)  
Contact: <http://www.eeoc.gov/contact/>

## **1. Wesley College Policy on Nondiscrimination**

Wesley College adheres to all federal and state civil rights laws banning discrimination in private institutions of higher education. Wesley College has a zero tolerance for discrimination against any employee, applicant for employment, student or applicant for admission on the basis of race, religion, hearing status, personal appearance, color, sex, pregnancy, political affiliation, source of income, place of business, residence, religion, creed, ethnicity, national origin (including ancestry), citizenship status, physical or mental disability, age, marital status, family responsibilities, sexual orientation, gender, gender identity, veteran or military status (including special disabled veteran, Vietnam-era veteran, or recently separated veteran), predisposing genetic characteristics, domestic violence victim status or any other protected category under applicable local, state or federal law, including protections for those opposing discrimination or participating in any investigation process on campus or within the Equal Employment Opportunity Commission or other human rights agencies.

This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the campus community, guest or visitor who acts to deny, deprive or limit the educational, employment, residential and/or social access, benefits and/or opportunities of any member of the campus community on the basis of their actual or perceived membership in the protected classes listed above is in violation of the College policy on nondiscrimination. When brought to the attention of the College, any such discrimination will be appropriately remedied by the College according to the procedures below.

## **2. Wesley College Policy on Accommodation of Disabilities**

Wesley College is committed to full compliance with the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if he or she has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

The Director of Human Resources has been designated as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any allegations of noncompliance.

### **a. Students with Disabilities**

Wesley College is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of the College.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Disabilities Support Services Coordinator who coordinates services for students with disabilities. The coordinator reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic programs.

### **b. Employees with Disabilities**

Pursuant to the ADA, Wesley College will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

An employee with a disability is responsible for requesting an accommodation in writing to Human Resources and provide appropriate documentation. Human Resources will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

### **3. Wesley College Policy on Discriminatory Harassment**

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of discriminatory harassment. Wesley College's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under the College's policy.

#### **a. Discriminatory and Bias-Related Harassment**

Harassment constitutes a form of discrimination that is prohibited by law. Wesley College will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, the College may also impose sanctions on the harasser. Wesley College's harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

A hostile environment may be created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent/pervasive and objectively offensive that it interferes with, limits or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities.

Offensive conduct and/or harassment that does not rise to the level of discrimination or that is of a generic nature not on the basis of a protected status may not result in the imposition of discipline under the College's policy, but will be addressed through civil confrontation, remedial actions, and education and/or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, employees should contact the Director of Human Resources and students should contact the Dean of Students.

The College condemns and will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by college policy or law.

#### **b. Sexual Harassment**

Both the Equal Employment Opportunity Commission and the State of Delaware regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. Wesley College has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.

Sexual harassment is:

- Unwelcome, sexual or gender-based verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any College program is encouraged to report it immediately to the College's Title IX Coordination Team.

Sexual harassment creates a hostile environment, and may be disciplined when it is:

- sufficiently severe, persistent/pervasive and objectively offensive that it,
  - has the effect of unreasonably interfering with, denying or limiting employment opportunities or the ability to participate in or benefit from the university's educational, social and/or residential program, and is
  - Based on power differentials (*quid pro quo*), the creation of a hostile environment or retaliation.

## **POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this policy. Wesley College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift a party out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes RAs and students over whom they have direct responsibility. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

### **c. Sexual Misconduct**

State law defines various violent and/or non-consensual sexual acts as crimes. Additionally, Wesley College has defined categories of sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, Wesley College considers Non-Consensual Sexual Intercourse violations to be the most serious, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, Wesley College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other gender-based offenses, including intimate partner or relationship (dating and/or domestic) violence, non-consensual sexual contact and stalking based on the facts and circumstances of the particular investigation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved. Violations include:

**i. Sexual Harassment (as defined in section b above)**

**ii. Non-Consensual Sexual Intercourse**

Defined as:

- any sexual penetration or intercourse (anal, oral or vaginal)
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.

**iii. Non-Consensual Sexual Contact**

Defined as:

- any intentional sexual touching
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force



Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

#### **iv. Sexual Exploitation**

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of sexual exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed)
- Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent)
- Prostitution
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection, and further includes administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent

#### **v. Consent<sup>1</sup>**

Consent is knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct.

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<sup>1</sup> The state definition of consent is a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old is a crime, as well as a violation of this policy, even if the minor wanted to engage in the act. Any person after said age, with legal capacity, not under force or duress, may give legal consent to sexual contact. (Del. Code Ann. tit 11 § 761) Which is applicable to criminal prosecutions for sex offenses in Delaware, but may differ from the definition used on campus to address policy violations.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the individual responding party of sexual misconduct was intoxicated and, therefore, did not realize the incapacity of the other.

Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. Silence or the absence of resistance alone is not consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.

In Delaware State, a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old is a crime, as well as a violation of this policy, even if the minor wanted to engage in the act.

#### **4. Other Civil Rights Offenses, When the Act is Based upon the Status of a Protected Class**

- Threatening or causing physical harm, extreme verbal abuse or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a protected class
- Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of their actual or perceived membership in a protected class

- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a protected class
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Wesley College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the hazing policy) on the basis of actual or perceived membership in a protected class; hazing is also illegal under the State of Delaware law and prohibited by Wesley College.
- Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class
- Violence between those in an intimate relationship to each other on the basis of actual or perceived membership in a protected class (this includes romantic relationships, dating, domestic<sup>2</sup> and/or relationship violence)<sup>3</sup>
- Stalking<sup>4</sup>, defined as a course of conduct directed at a specific person on the basis of actual or perceived membership in a protected class that is unwelcome and would cause a reasonable person to feel fear<sup>5</sup>
- Any other Wesley College rules, when a violation is motivated by the actual or perceived membership of the victim [on the basis of sex or gender or in a protected class], may be pursued using this policy and process.

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<sup>2</sup> The state definition of domestic violence is violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. Domestic violence includes, but is not limited to, actual or potential physical injury or harm, sexual abuse or threats of physical injury or harm, or sexual abuse against a person with a past or present intimate relationship such as marriage, dating, family, friends or cohabitation. Del. Code Ann. tit 11 § 1312(a)

Which is applicable to criminal prosecutions for domestic violence in DE, but may differ from the definition used on campus to address policy violations.

<sup>3</sup>

- Employee A has been in an intimate relationship with Employee B for over a year; Employee A punches Employee B in the face during an argument (Dating Violence).
- Student A has been in an intimate relationship with Student B for over a year; Students A & B live together. During an argument, Student A shoves Student B to the ground (Domestic Violence).

<sup>4</sup> The state definition of stalking is a person is guilty of stalking when the person knowingly engages in a course of conduct directed at a specific person. Which is applicable to criminal prosecutions for stalking in DE, but may differ from the definition used on campus to address policy violations.

<sup>5</sup>

- Employee A recently ended an intimate relationship with Employee B. For the past three weeks, B has been sending A 100 text messages per day and waits by A's car at the end of each day to beg and plead with her to take him back. When she refuses, he loses control, makes threatening gestures, and tells her she will regret this. Employee A indicates she is fearful of what B might do to her (Stalking).
- Mark is a student on campus who has always been fascinated by women who dye their hair. One day, he notices MaryLou, whose hair is dyed a very bright purple. He follows her home to see where she lives, and begins to track her history, actions and movements online. His fascination increases to the point where he follows her frequently on campus, takes pictures of her without her permission, and spies through her window at night with a long-range camera lens. He wants to have her beautiful purple hair for his own, so that he can stroke it whenever he wants.

Sanctions for the above-listed “Other Civil Rights Behaviors” behaviors range from reprimand up through and including expulsion (students) or termination of employment.

## **5. Retaliation**

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging harassment, supporting a party bringing an investigation or for assisting in providing information relevant to a claim of harassment is a serious violation of Wesley College policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the Title IX Coordination Team and will be promptly investigated. Wesley College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

## **6. Remedial Action**

Wesley College will implement initial remedial and responsive and/or protective actions upon notice of alleged harassment, retaliation and/or discrimination. Such actions could include but are not limited to: no contact orders, providing counseling and/or medial services, academic support, living arrangement adjustments, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, referral to campus and community support resources.

Wesley College will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. Procedures for handling reported incidents are fully described below. Deliberately false and/or malicious accusations of harassment, as opposed to an investigation which, even if erroneous, are made in good faith, are just as serious an offense as harassment and will be subject to appropriate disciplinary action.

## **7. Confidentiality and Reporting of Offenses under This Policy**

Wesley College officials, depending on their roles at the College, have varying reporting responsibilities and abilities to maintain confidentiality. In order to make informed choices, one should be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality, offering options and advice without any obligation to inform an outside agency or individual unless you have requested information to be shared. Other resources exist for you to report crimes and policy violations and these resources will take action when you report victimization to them. Most resources on campus fall in the middle of these two extremes; neither the College, nor the law, requires them to divulge private information that is shared

with them, except in rare circumstances. The following describes the three reporting options at College:

**a. Confidential Reporting**

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with off-campus local rape crisis counselors, domestic violence resources, local or state assistance agencies, [or on or off-campus members of the clergy/chaplains] who will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Campus counselors [and/or the Employee Assistance Program] are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient or parishioner.

**b. Formal Reporting Options**

Alleging party bringing an investigation forward are encouraged to speak to Wesley College Title IX Coordination Team to make formal reports of incidents of sexual misconduct. The alleging party bringing an investigation forward has the right, and can expect, to have the incident taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through these procedures. Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve the individual's rights and privacy.

**8. Federal Timely Warning Obligations**

Victims of sexual misconduct should be aware that Wesley College administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The College will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

# **EQUITY PROCESS FOR RESOLVING INVESTIGATIONS OF HARASSMENT, SEXUAL MISCONDUCT AND OTHER FORMS OF DISCRIMINATION**

Wesley College will act on any formal or informal investigation or notice of violation of the policy on Equal Opportunity, Harassment and Nondiscrimination, that is received by Title IX Coordination Team.

The procedures described below will apply to all investigations involving students, staff or faculty members. Redress and requests for responsive actions for investigations brought involving non-members of the community are also covered by these procedures.

## **1. Title IX Coordination Team**

Members of the Coordination Team are announced in an annual distribution of this policy to campus staff, current students and faculty members. The list of members and a description of the panel can be found at [www.wesley.edu](http://www.wesley.edu). Members of the Coordination Team are trained in all aspects of the investigation process, and can serve in of the following roles, at the direction of the Title IX Campus Site Coordinator:

- To provide sensitive intake and initial counseling of investigations
- To serve in a mediation role in conflict resolution
- To investigate formal and informal reports
- To act as advisors to those involved in investigation
- To serve on hearing panels for investigations
- To serve on appeal panels for investigations

Coordination Team members also recommend proactive policies, and serve in an educative role for the community. The President appoints the panel, which reports to the Title IX Campus Site Coordinator. Coordination Team members receive annual training organized by the Title IX Campus Site Coordinator, including a review of Wesley College policies and procedures, so that they are able to provide accurate information to members of the community. All Coordination members' are required to attend this annual training.

The Hearing Panel includes:

- The Dean of Students
- The Vice President of Academic Affairs/ Provost
- At least 5 members of the Faculty
- At least 2 member of Student Life
- At least 5 members of the staff, 2 of which representatives from Athletics
- At least 1 representatives from Human Resources

- At least 3 Students, who have completed a minimum of 60 credit hours with a GPA of 2.5 or higher.

Hearing members are usually appointed to three-year terms. Appointments to the Hearing Panel should be made with attention to representation of groups protected by the harassment and non-discrimination policy. Individuals who are interested in serving on the Hearing Panel are encouraged to contact the Title IX Campus Site Coordinator.

## **2. Filing an investigation**

Any member of the community, guest or visitor who believes that the policy on Equal Opportunity, Harassment and Nondiscrimination has been violated should contact a member of the Title IX Coordination Team. It is also possible for employees to notify a supervisor, or for students to notify an administrative advisor or faculty member, or any member of the community may contact Campus Police/Public Safety. These individuals will in turn notify the Title IX Coordination Team.

All employees receiving reports of a potential violation of Wesley College policy are expected to promptly contact the Title IX Campus Site Coordinator, within 24 hours of becoming aware of a report or incident. All initial contacts will be treated with the maximum possible privacy: specific information on any investigation received by any party will be reported to the Title IX Campus Site Coordinator, but, subject to the College's obligation to redress violations, every effort will be made to maintain the privacy of those initiating a report of an investigation. In all cases, Wesley College will give consideration to the party bringing an investigation with respect to how the investigation is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution when an alleged victim chooses not to initiate or participate in a formal investigation.

## **3. Investigation Intake**

Following receipt of notice or an investigation, the Title IX Campus Site Coordinator will, promptly assign a Title IX Coordination Team member to work as advisor to the person who reported the incident. Normally, within two business days, an initial determination is made whether a policy violation may have occurred and/or whether conflict resolution might be appropriate. If the incident does not appear to allege a policy violation or if conflict resolution is desired by the alleging party and appears appropriate given the nature of the alleged behavior, then the investigation does not proceed.

A full investigation will necessarily be pursued if there is evidence of a pattern of misconduct or a perceived threat of further harm to the community or any of its members. The College aims to complete all investigations within a 60 business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordination Team with notice to the parties.

#### **4. Investigation**

If a party bringing an investigation wishes to pursue a formal investigation or if the College, based on the alleged policy violation, wishes to pursue a formal investigation, then the Title IX Campus Site Coordinator appoints a Title IX Central Coordinator to conduct the investigation, usually within two business days of determining that an investigation grievance should proceed. Investigations of incidents brought directly by those alleging harm should be completed expeditiously, normally within 10 business days of notice to the Title IX Campus Site Coordinator. Investigation may take longer when initial interviews fail to provide direct first-hand information. The College may undertake a short delay (3-10 days, to allow evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. Wesley College action will not be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced. All investigations will be thorough, reliable and impartial, and will entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, if necessary.

#### **5. Interim Remedies**

If, in the judgment of the Title IX Coordination Team, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the accused individual or the ongoing activity of a student organization whose behavior is in question, the Title IX Coordination Team(or designee) may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the alleged victim and the community and to prevent further violations. These remedies may include referral to counseling and health services or to education to the community, altering the housing situation of an accused student or resident employee (or the alleged victim, if desired), altering work arrangements for employees, providing campus escorts, implementing contact limitations between the parties, offering adjustments to academic deadlines, course schedules, etc.

The College may interim suspend a student, employee or organization pending the completion of Title IX Central Coordinators investigation and procedures. In all cases in



which an interim suspension is imposed, the student, employee or student organization will be given the opportunity to meet with the Title IX Central Coordinator prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show why the suspension should not be implemented. The appropriate administrative officer or Title IX Campus Site Coordinator has discretion to implement or stay an interim suspension under the policy on Equal Opportunity, Harassment and Nondiscrimination, and to determine its conditions and duration. Violation of an interim suspension under this policy will be grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to Wesley College housing and/or the College campus/facilities/events. As determined by the appropriate administrative officer or Title IX Coordination Team this restriction includes classes and/or all other College activities or privileges for which the student might otherwise be eligible. At the discretion of the appropriate administrative officer or Title IX Coordination Team, alternative coursework options may be pursued to ensure as minimal an impact as possible on the accused student.

## **6. Investigation Resolution**

During or upon the completion of investigation, the investigators will meet with the Title IX Coordination Team. Based on that meeting, the Title IX Coordination Team will make a decision on whether there is reasonable cause to proceed with the investigation. If the Title IX Coordination Team decides that no policy violation has occurred or that the preponderance of evidence (i.e., whether it is more likely than not that the accused individual committed each alleged violation) does not support a finding of a policy violation, then the process will end unless the party bringing an investigation requests that the Title IX Coordination Team make an extraordinary determination to re-open the investigation or to forward the matter for a hearing. This decision lies in the sole discretion of the Title IX Coordination Team. If there is reasonable cause, the Title IX Coordination Team will direct the investigation to continue, or if there is a preponderance of evidence of a violation, then the Title IX Coordination Team may recommend conflict resolution, a resolution without a hearing or a formal hearing, based on the below criteria.

### **a. Conflict Resolution**

Conflict resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal hearing process to resolve conflicts. The Title IX Coordination Team will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue and the susceptibility of the conduct to conflict resolution. In a conflict resolution meeting, a Title IX Central Coordinator will facilitate a dialogue with the parties to an effective resolution, if possible.

Sanctions are not possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies. The Title IX Central Coordinator will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions.

Conflict resolution will not be the primary resolution mechanism used to address grievances of sexual misconduct or violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the formal process is completed should the parties and the Title IX Central Coordinator believe that it could be beneficial. It is not necessary to pursue conflict resolution first in order to make a formal investigation, and anyone participating in conflict resolution can stop that process at any time and request a formal hearing.

### **b. Resolution without a Hearing**

Resolution without a hearing can be pursued for any behavior that falls within the policy on Equal Opportunity, Harassment and Nondiscrimination, at any time during the process. The Title IX Central Coordinator will provide written notification of an investigation to any member of the College community who is accused of an offense of harassment, discrimination, or retaliation. The Title IX Central Coordinator will meet with the responding individual to explain the finding(s) of the investigation. Once informed, the responding party may choose to admit responsibility for all or part of the alleged policy violations at any point in the process. If so, the Title IX Central Coordinator will render a finding that the individual is in violation of College policy for the admitted conduct, and will normally proceed to convene a formal hearing on any remaining disputed violations. For admitted violations, Title IX Coordination Team will recommend an appropriate sanction or responsive action. If the sanction/responsive action is accepted by both the party bringing an investigation and responding party, the Dean of Students, Vice President of Academic Affairs/ Provost or Human Resources will implement it, and act promptly and effectively to remedy the effects of the admitted conduct upon the victim and the community. If either party rejects the sanction/responsive action, the hearing will be held on the sanction/responsive action only, according to the hearing procedures below, except in the case of at-will employees for whom findings and responsive actions will be determined by Human Resources.

### **c. Formal Hearing**

For any grievances that are not appropriate for conflict resolution and which are not resolved without a hearing, the Title IX Central Coordinator will initiate a formal hearing or for employees for whom no hearing process is available, will refer his/her findings to Human Resources for implementation.

## **7. Formal Hearing Procedure**

### **a. *Hearing***

The Title IX Campus Site Coordinator will appoint a non-voting panel Chair and three members of the hearing panel, none of whom have been previously involved with the investigation. Hearing panels may include both faculty and non-faculty employees, with at least one faculty employee selected in an investigation involving a faculty member. Students do not serve on hearing panel, except in cases of lesser student-on-student investigations. No member of the panel may be a practicing attorney. The panel will meet at times determined by the Chair.

### **b. Notification of Charges**

At least one week prior to the hearing, or as far in advance as is reasonably possible if an accelerated hearing is scheduled with the consent of the parties, the Hearing Panel Chair will send a letter to the parties with the following information. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The letter will contain:

- A description of the alleged violation(s), a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result.
- The time, date and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities. If any party does not appear at the scheduled hearing, the hearing will be held in their absence. For compelling reasons, the Chair may reschedule the hearing.
- The parties may have the assistance of a hearing panel member, or other advisor at the hearing. Typically, advisors are members of the campus community, but the Title IX Campus Site Coordinator may grant permission for an outside advisor upon request. The parties to the hearing are expected to ask and respond to questions on their own behalf, without representation by their advisor. The advisor may consult with the advisee quietly or in writing, or outside the hearing during breaks, but may not speak on behalf of the advisee to the panel.
- Hearings for possible violations that occur near or after the end of an academic term will be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the 60-day goal for resolution.

### **c. Hearing Procedures**

Hearings will be convened, usually within one to two weeks of the completion of the investigation, and will be conducted in private. The hearing panel has the authority to hear all collateral misconduct, meaning that it hears all allegations of discrimination, harassment and retaliation, but also may hear any additional alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation, even though those collateral allegations may not specifically fall within hearing panel jurisdiction. Accordingly, investigations should be conducted with as wide a scope as necessary.

Participants will include the non-voting Chair, the three members of the panel, the investigator(s) who conducted the investigation on the grievance, the party bringing an investigation and responding party (is) (or three organizational representatives in a case where an organization is charged), advisors to the parties and any called witnesses. The Chair will exchange the names of witnesses the College intends to call, all pertinent documentary evidence and any written findings from the investigators between the parties at least two business days prior to the hearing. In addition, the parties will be given a list of the names of each of the hearing panel members at least two business days in advance of the hearing. Should either (any) party object to any panelist, he/she must raise all objections, in writing, to the Chair immediately. Panel members will only be unseated if the Chair concludes that their bias precludes an impartial hearing of the grievance. Additionally, any panelist or Chair who feels he/she cannot make an objective determination must recuse himself or herself from the proceedings when notified of the identity of the parties and all witnesses in advance of the hearing.

The Chair, in consultation with the parties and investigators, may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the investigator(s) during the hearing. All testimonies summarized by the investigator if the witness is not present must be documented and signed by the said witness. All parties will have ample opportunity to present facts and arguments in full and question all present witnesses during the hearing, though formal cross-examination is not used between the parties. If alternative questioning mechanisms are desired (screens, Skype, questions directed through the Chair, etc.), the parties should request them from the Chair at least two business days prior to the hearing.

Once the procedures are explained and the participants are introduced, the investigator will present the report of the investigation first, and be subject to questioning by the parties and the hearing panel. The investigator(s) will be present during the entire hearing process, but will only be present during deliberations at the request of the Chair. The findings of the investigation are not binding on the panel, though any undisputed conclusions of the investigation report will not be revisited, except as necessary to determine

sanctions/responsive actions. Once the investigator(s) is/are questioned, the hearing panel will permit questioning of and by the parties, and of any present witness. Questions may be directed through the panel at the discretion of the Chair.

Formal rules of evidence will not apply. Any evidence that the panel believes is relevant and credible may be considered, including history and pattern evidence. The Chair will address any evidentiary concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence and may ask the panel to disregard evidence lacking in credibility. The Chair will determine all questions of procedure and evidence. Anyone appearing at the hearing to provide information will respond to questions on his/her own behalf.

Unless the Chair determines it is appropriate, no one will present information or raise questions concerning: (1) incidents not directly related to the possible violation, unless they show a pattern, or (2) the sexual history of or the character of the victim/party bringing a grievance.

There will be no observers in the hearing. The Chair may allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the panel or the parties involved. The panel does not hear from character witnesses, but will accept up to two letters supporting the character of the individuals involved.

In hearings involving more than one accused individual or in which two parties bringing an investigation have accused the same individual of substantially similar conduct, the standard procedure will be to hear the investigations jointly; however, the Title IX Coordination Team may permit the hearing pertinent to each responding party to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each responding party.

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings, subject to Wesley College consequences for failure to do so. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors.

Hearings are recorded for purposes of review in the event of an appeal. Hearing panel members, the parties and/or the persons who initiated the action, and appropriate administrative officers of Wesley College will be allowed to listen to the recording in a location determined by the Title IX Coordination Team or designee. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Campus Site Coordinator. Persons given access to the recording will be required to sign an agreement confirming that they will protect the privacy of the information contained in the

recording.

#### **d. Decisions**

The Hearing Panel will deliberate in closed session to determine whether the responding party is responsible or not responsible for the violation(s) in question. The panel will base its determination on a preponderance of the evidence (i.e., whether it is more likely than not that the accused individual committed each alleged violation). If an individual responding party or organization is found responsible by a majority of the panel, the panel will recommend appropriate sanctions to the Title IX Campus Site Coordinator.

The Chair will prepare a written deliberation report and deliver it to the Title IX Campus Site Coordinator, detailing the findings, how each member voted, the information cited by the panel in support of its recommendation and any information the hearing panel excluded from its consideration and why. The report should conclude with any recommended sanctions. This report should not exceed two pages in length and must be submitted to the Title IX Campus Site Coordinator within two (2) days of the end of deliberations.

The Title IX Campus Site Coordinator will inform the accused individual and the party bringing an investigation of the final determination within 2-3 business days of the hearing, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official Wesley College records; or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

#### **e. Sanctions**

Sanctions or responsive actions will be determined by the Hearing Panel. Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous grievances or allegations involving similar conduct
- Any other information deemed relevant by the Hearing Panel
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the victim and the community

## I. Student Sanctions

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- *Verbal or Written Warning:* A formal statement that the behavior was unacceptable and a warning that further infractions of any Wesley College policy, procedure or directive will result in more severe sanctions/responsive actions.
- *Denied Access-* Denial of the student's right to be in specific areas of the campus or a specified period of time (i.e. exclusion from a residence hall, game room). Termination of the Housing Contract is not a censure of denied access under this provision.
- *Probation:* A written reprimand for violation of the Code of Student Conduct, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any Wesley College policy, procedure or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, non-contact orders and/or other measures deemed appropriate.
- *Suspension:* Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at College. This sanction will be noted as a Conduct Suspension on the student's official transcript.
- *Expulsion:* Permanent termination of student status, revocation of rights to be on campus for any reason or attend College-sponsored events. This sanction will be noted as a Conduct Expulsion on the student's official transcript.
- *Withholding Diploma.* The Wesley College may withhold a student's diploma for a specified period of time and/or deny a student's participation in commencement activities if the student has a grievance pending, or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree.* The Wesley College reserves the right to revoke a degree awarded from the Wesley College for fraud, misrepresentation or other violation of Wesley College policies, procedures or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions.* Deactivation, de-recognition, loss of all privileges (including registration), for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, the Wesley College may assign any other sanctions as deemed appropriate.

## **ii. Employee Sanctions**

Responsive actions for an employee who has engaged in harassment, discrimination and/or retaliation include warning, required counseling, demotion, suspension with pay, suspension without pay and termination.

## **f. Withdrawal or Resignation While Charges Pending**

Students: The College does permit a student to withdraw if that student has an investigation pending for violation of the policy on Equal Opportunity, Harassment and Nondiscrimination, or for charges under the Code of Student Conduct. Should a student decide to leave and not participate in the investigation and/or hearing, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to Wesley College unless all sanctions have been satisfied.

Employees: Should an employee resign while charges are pending, the records of the Title IX Central Coordinator will reflect that status. The Title IX Coordination Team will act to promptly and effectively remedy the effects of the conduct upon the victim and the community.

## **g. Appeals**

All requests for appeal considerations must be submitted in writing to the Title IX Campus Site Coordinator within three business days of the delivery of the written finding of the Hearing Panel.

A three-member panel designated by the Title IX Campus Site Coordinator who was not involved in the investigation previously will consider all appeal requests. Any party may appeal, but appeals are limited to the following:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The sanctions imposed are substantially disproportionate to the severity of the violation [or better: The sanctions fall outside the range of sanctions the College has designated for this offense].



The appeals panel will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. When any party requests an appeal, the other party (parties) will be notified and joined in the appeal. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately.

Where the appeals panel finds that at least one of the grounds is met, and proceeds, additional principles governing the hearing of appeals include the following:

- Appeal decisions by the panel are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be a full rehearing of the investigation. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the original hearing panel for reconsideration. Other appeals may be remanded at the discretion of the Title IX Campus Site Coordinator or heard by the three-member panel.
- Sanctions imposed are implemented immediately unless the Title IX Campus Site Coordinator or designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The Title IX Campus Site Coordinator will normally, after conferring with the appeals panel, render a written decision on the appeal to all parties within 2-3 business days from hearing of the appeal.
- All parties should be informed of whether the grounds for an appeal are accepted and the results of the appeal decision.
- Once an appeal is decided, the outcome is final: further appeals are not permitted.

#### **h. Failure to Complete Sanctions/Comply with Responsive Actions**

All responding parties are expected to comply with conduct sanctions/responsive/corrective actions within the time frame specified by the Title IX Campus Site Coordinator. Failure to follow through on conduct sanctions/responsive/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the College and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Campus Site Coordinator.

### **i. Records**

In implementing this policy, records of all investigations, resolutions, and hearings will be kept by in the President Office.

### **j. Statement of the Rights of a Party Bringing an Investigation**

- To be treated with respect by Wesley College officials.
- To take advantage of campus support resources (such as Counseling & Psychological Services, the Office of the Chaplains, and Wesley College Health Services for students).
- To experience a safe living, educational and work environment.
- To have an advisor during this process.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To receive amnesty for minor student misconduct (such as alcohol or drug violations) that is ancillary to the incident.
- To be free from retaliation.
- To have investigations heard in substantial accordance with these procedures.
- To full participation of the injured party in any hearing process whether the injured party is serving as the party bringing an investigation or the College is serving as party bringing an investigation.
- To be informed in writing of the outcome/resolution of the investigation, sanctions where permissible and the rationale for the outcome where permissible.
- Refer to law enforcement and have assistance.
- Housing and living accommodations.
- No contacts.

### **k. Statement of the Rights of the Responding Party**

- To be treated with respect by Wesley College officials.
- To take advantage of campus support resources (such as Counseling & Psychological Services, the Office of the Chaplains, and Wesley College Health Services for students).
- To have an advisor during this process.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To have an investigation heard in substantial accordance with these procedures.
- To be informed of the outcome/resolution of the grievance and the rationale for the outcome, in writing.

## **8. Revision**

These policies and procedures will be reviewed and updated annually by the Title IX Coordination Team. The Title IX Coordination Team may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party. However, the Title IX Coordination Team may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of its implementation will apply. Policy in effect at the time of the offense will apply even if the policy is changed subsequently, unless the parties consent to be bound by the current policy.

This policy and procedure was implemented in February 2015.