



## TITLE IX SEXUAL HARASSMENT POLICY

### INTRODUCTION

As Title IX of the Higher Education Amendments of 1972 (“Title IX”) permits, Wabash College admits only men as students to its education program or activity. Title IX prohibits discrimination on the basis of sex in a school’s education program and activity, including sexual harassment. Wabash prohibits sex discrimination and sexual harassment in its education program or activity. This policy defines sexual harassment subject to Title IX, explains how to report it and how to file a formal complaint, and details how Wabash will respond to such reports and formal complaints.

Additionally, all Wabash students must comply with the Gentleman’s Rule. All Wabash employees must comply with the College’s employment policies. Nothing in this policy limits Wabash’s right to address, investigate and discipline under the Gentleman’s Rule or any other College policy alleged misconduct that does not constitute sexual harassment subject to Title IX.

### DEFINITIONS

Actual Knowledge means notice of Sexual Harassment or allegations of Sexual Harassment to the College’s Title IX Coordinator or any College official who has authority to institute corrective measures on the College’s behalf. In addition to the Title IX Coordinator, employees with authority to institute corrective measures on behalf of the College are the Dean of Students, the Associate Dean of Students, the Director of Athletics and Campus Wellness, the Director of Human Resources, and the Director of Safety and Security. This standard is not met when the only College official with Actual Knowledge is the Respondent.

Complainant means any individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

Consent means, for purposes of this Title IX policy, the positive, unambiguous, and voluntary agreement to engage in a specific sexual activity throughout a sexual encounter. Consent to some acts does not constitute consent to others, nor does past consent to a given act constitute present or future consent. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Consent cannot be obtained by or through coercion or force. Consent cannot be obtained from someone who is asleep or otherwise mentally or physically incapacitated, whether due to alcohol, drugs, or some other condition. A person is mentally or physically incapacitated when the person lacks the ability to make or act on considered decisions to engage in sexual activity. A person is also incapable of giving valid consent to sexual activity if they are under the legal age of consent.

Decision Maker means the person or persons who oversee a hearing to resolve a Formal Complaint.

Wabash’s education program or activity includes locations, events, or circumstances over which Wabash exercised substantial control over both the Respondent and the context in which the Sexual Harassment occurs, and also includes any building owned or controlled by a student organization that Wabash officially recognizes.

Formal Complaint means a document or electronic submission signed by the Complainant or the College’s Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the College investigate the allegation. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the College’s education program or activity. Attempting to participate includes applicants for



admission or a person who has withdrawn but indicates a desire to re-enroll at the College if it appropriately responds to Sexual Harassment allegations.

Investigator means an individual assigned by the Title IX Coordinator to investigate a Formal Complaint.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment. Complainants and Respondents are sometimes referred to collectively as Parties and individually as a Party.

Sexual Harassment means conduct against a person in the United States on the basis of sex occurring in the College's education program or activity that satisfies one or more of the following:

- A. A College employee conditioning the provision of a College aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
- B. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or
- C. "Sexual assault" as defined in 20 U.S.C.1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Title IX Coordinator means an individual who coordinates the College's compliance with Title IX, provides leadership for Title IX activities, offers consultation, education, and training, and helps to ensure that the College responds appropriately, effectively, and equitably to all Title IX issues.

## **DUTY TO REPORT**

All students and College employees, except those exempted by legal privilege of confidentiality, have an obligation promptly to report circumstances that they reasonably believe may constitute Sexual Harassment to the Title IX Coordinator. Corrective action may be taken against any individual who fails to do so. Reports should be made to the Title IX Coordinator who can be reached in the following ways:

Title IX Coordinator: Heather M. Thrush  
 In-Person: Center Hall 112A  
 Mail: 301 W. Wabash Avenue Crawfordsville, IN 47933  
 Phone: 765-361-6347  
 Email: thrushh@wabash.edu

When the Dean of Students, the Associate Dean of Students, the Director of Athletics and Campus Wellness, the Director of Human Resources, or the Director of Safety and Security have notice of a report, they should provide that information to the Title IX Coordinator as soon as possible.

## **CONFIDENTIALITY**

The College will maintain the confidentiality of the identity of individuals who make reports or complaints of sex discrimination or Sexual Harassment, persons accused of such misconduct, and any witnesses except as FERPA permits, as is deemed necessary to protect the safety of the College's campus and community, as the law requires, or to carry out this policy's purposes or provisions, including conducting a grievance process.

## THE TITLE IX COORDINATOR'S DISCRETION TO FILE A FORMAL COMPLAINT

- A. If an incident is disclosed or reported to the College and the individual requests that the College not engage in a grievance process, the Title IX Coordinator or designee will explain that the College prohibits retaliation and explain the steps it will take to prevent and respond to retaliation if the individual participates in its grievance process. The Title IX Coordinator will evaluate the request to determine whether the College can honor the request while still providing a safe and nondiscriminatory environment.
- B. A decision to proceed with a grievance process despite an individual's request will be made on a case-by-case basis after an individualized review, and the Complainant will be notified if the College makes such a decision. If the College proceeds with a grievance process, the Title IX Coordinator will make the Formal Complaint and the Complainant is under no obligation to participate.

## RETALIATION

Wabash College prohibits retaliation. Specifically, no one may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or 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 policy.

## REMEDIES WITHOUT INVESTIGATIVE RESOLUTION

- A. When the College is unable to proceed with investigative resolution (e.g., due to insufficient information in the report or a request by the Complainant that an investigation not move forward which the College grants), the College may take other measures to seek to remedy the effects of the alleged Sexual Harassment or prevent its recurrence. Remedial measures may also be implemented when the College determines that inappropriate behavior occurred but did not rise to the level of a policy violation.
- B. Remedial measures may include and are not limited to providing Sexual Harassment training, increasing security in a designated space, changing policy or procedure, or conducting climate checks.

## RESPONSIVE ACTIONS AND THE GRIEVANCE PROCESS

- A. Steps in the Process. Wabash's Title IX responsive actions upon its Actual Knowledge of Sexual Harassment may involve different steps depending on the individualized circumstances of a matter. These steps may include supportive measures with or without the filing of a Formal Complaint; the filing of a Formal Complaint followed by informal resolution; or the resolution of a Formal Complaint through investigation and a live hearing, which may be followed by an appeal.
- B. Prompt and Equitable Resolution. When Wabash has Actual Knowledge of Sexual Harassment, it will provide supportive measures and a prompt and equitable resolution through the grievance process set forth in this policy. After the filing of a Formal Complaint, the College will set reasonably prompt time frames for all steps in the grievance process. Parties may seek temporary delays or limited extensions of time for good cause. For purposes of this policy, any time period defined by days shall mean business days, excluding weekends and College holidays.

- C. Presumption of Non-Responsibility. Regarding any report of Sexual Harassment and a Formal Complaint pertaining to such allegations, the Respondent is presumed to be not responsible for the alleged conduct until a determination is made at the conclusion of the grievance process.
- D. Initial Assessment. Upon receiving a report, the Title IX Coordinator will promptly discuss with the Complainant the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.
- E. Supportive Measures. The Title IX Coordinator will coordinate the provision of supportive measures. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or to deter Sexual Harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The College will maintain as confidential any supportive measures provided to the Complainant or Respondent to the extent that maintaining such confidentiality would not impair its ability to provide the supportive measures.
- F. Emergency Removal. The College may remove a Respondent from its education program or activity on an emergency basis if (a) it determines based upon an individualized safety and risk analysis that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or any other individual arising from Sexual Harassment allegations, and (b) it provides the Respondent with notice and an opportunity to challenge the decision immediately following the emergency removal.
- G. Administrative Leave. After a Formal Complaint is filed, the College may place an employee Respondent on administrative leave during the pendency of a grievance process.
- H. Formal Complaint. At the time of filing a Formal Complaint, the Complainant must be participating or attempting to participate in the College's education program or activity. Attempting to participate includes applicants for admission or a person who has withdrawn but indicates a desire to re-enroll at the College if it appropriately responds to Sexual Harassment allegations. Sexual misconduct allegations against Wabash students by persons not participating or attempting to participate in its education program or activity will be processed under the Gentleman's Rule. If the Complainant or the College's Title IX Coordinator elects to file a Formal Complaint, the Title IX Coordinator will provide written notice to the parties who are known within ten (10) days including:
- i. Notice of the College's grievance process including its informal resolution process;
  - ii. The allegations of facts that potentially constitute Sexual Harassment with sufficient details known at the time and with sufficient time to prepare a response before any initial interview, including the identities of the parties involved in the incident and the date and location of the alleged incident, if known;
  - iii. That the Respondent is presumed not responsible for the alleged conduct and that a responsibility determination is made at the conclusion of the grievance process;

- iv. That all parties are entitled to an advisor of their choice who may be, but is not required to be, an attorney (the College is not required to compensate any individual for serving as an advisor);
- v. That all parties can inspect and review evidence; and,
- vi. That the College prohibits false statements made in bad faith.

The College may consolidate Formal Complaints where the allegations of Sexual Harassment arise out of the same facts or circumstances.

I. Dismissal of Formal Complaint.

- i. In the event that prior to, or in the course of, an investigation, the College determines that the allegations fail to meet the definition of Sexual Harassment even if proved, or did not occur against a person in the United States, or did not occur in the College's education program or activity, the College must dismiss the Formal Complaint. If dismissed, the allegations and events underlying the Formal Complaint may still be resolved through an informal resolution process as outlined below or under the Gentleman's Rule or any other applicable College policy.
- ii. The College may dismiss the Formal Complaint or any of its allegations if at any time during the investigation or hearing (a) the Complainant notifies the Title IX Coordinator in writing that he or she wishes to withdraw the Formal Complaint or any of its allegations; (b) the Respondent is no longer enrolled in or employed by the College; or (c) specific circumstances prevent the College from gathering sufficient evidence to reach a determination as to the Formal Complaint or its allegations (e.g., lack of participation in the investigative process by parties or witnesses).
- iii. If the College dismisses the Formal Complaint for any reason, the College must promptly send to the parties written notice of the dismissal and the reasons for the dismissal simultaneously. Either party may appeal the dismissal as outlined in this policy's appeals process.

J. Informal Resolution. The College may offer informal resolution if a Formal Complaint is filed and the Respondent is a student; informal resolution is not available if the Respondent is an employee. At any time prior to reaching a determination regarding responsibility, the College may facilitate an informal resolution process that does not involve a full investigation and adjudication as follows:

- i. The College provides a written notice disclosing (a) the allegations and the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations; (b) at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint; and (c) any consequences resulting from the informal resolution process, including the records that will be maintained or could be shared and obtained.
- ii. The College obtains the parties' voluntary written consent to the informal resolution process.
- iii. The College will provide a facilitator who is free from conflicts of interest and bias for or against any party.
- iv. Informal resolution can take any form that the parties agree upon. The Title IX Coordinator will work with the parties to develop a form of resolution that adequately resolves the needs of the

parties. This may include, among other forms, (a) a facilitating dialogue involving the Complainant and the Respondent and (b) mediation.

- v. Through informal resolution, the parties and the College may agree to additional measures (including educational programming, training, regular meetings with an appropriate College individual or resource, extensions of no contact orders, or counseling sessions).

## INVESTIGATION AND HEARINGS

### A. Investigation

- i. The College will investigate any Formal Complaint that has not been dismissed. An Investigator will be assigned to the case by the Title IX Coordinator. During the investigation, the Investigator will seek to meet separately with the Complainant, the Respondent, and any reasonably available witnesses who may have information regarding the alleged incident. The Investigator may also gather or request other information or evidence regarding the alleged incident when available and appropriate. Both the Complainant and Respondent will be asked to identify witnesses and provide other information regarding the alleged incident in a timely manner to facilitate prompt resolution of the Formal Complaint.
- ii. Although the College advises both the Complainant and Respondent to participate in the investigation to facilitate a fair and equitable resolution, neither is required to do so.
- iii. During the investigation process, the parties have an equal opportunity to:
  - a. A process with reasonably prompt timeframes, with extensions for good cause;
  - b. Present relevant information to the Investigator, including inculpatory and exculpatory evidence and fact and expert witnesses;
  - c. Have the opportunity to be accompanied to any meeting or proceeding by an advisor of their choice, who may be, but is not required to be, an attorney; and
  - d. An investigator who is adequately trained to investigate cases of alleged Sexual Harassment, is familiar with applicable policies and procedures, and who does not have a conflict of interest or bias for or against any party.
- iv. During the investigation, the advisor may advise his or her party but does not have a speaking role.
- v. The College must provide a written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings to all parties whose participation is invited or expected with sufficient time for the party to prepare to participate.
- vi. The College will not restrict the ability of a Complainant or Respondent to discuss the allegations under investigation or to gather and present relevant evidence.
- vii. Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.
- viii. The College will provide both parties an equal opportunity to inspect and review any evidence obtained in the investigation that is directly related to the allegations raised in a Formal Complaint. This includes the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. The purpose of this disclosure is to permit each

party to respond to the evidence prior to the investigation's conclusion. Before the report is finalized, the Investigator will send to all parties and their advisors a draft of the investigative report and the evidence subject to inspection and review in an electronic format or a hard copy. The parties will have at least ten (10) days to submit a written response, which the Investigator will consider before finalizing the investigative report. The Investigator will finalize an investigative report that summarizes relevant evidence. At least ten (10) days prior to a hearing or other determination regarding responsibility, the Investigator will send to each party and the party's advisor the investigative report in an electronic format or a hard copy, for their review and written response.

## B. Hearings

For all live hearings conducted under the grievance process:

- i. The Title IX Coordinator will assign one or more Decision Makers (hereinafter the "Decision Maker") who have received training to oversee the hearing. The Decision Maker will be impartial, avoid any bias, and objectively analyze all of the relevant evidence, including inculpatory and exculpatory evidence. A person who serves as Title IX Coordinator or Investigator or who attempted to facilitate an informal resolution in a matter cannot also serve as the Decision Maker in that matter.
- ii. The Respondent is presumed not responsible for the alleged conduct until the Decision Maker makes a determination regarding responsibility after the hearing.
- iii. The Decision Maker will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived it.
- iv. Credibility determinations may not be based upon a person's status as a Complainant, Respondent, or witness.
- v. The College will make available at the hearing any evidence obtained in the investigation that is directly related to the allegations raised in a Formal Complaint. This includes the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. The purpose of this disclosure is to give each party equal opportunity to refer to such evidence during the hearing, including for cross-examination.
- vi. Hearings are not legal proceedings and do not follow courtroom procedure or the formal rules of evidence. During any hearings, each party must have an advisor present to cross-examine the other party. This advisor does not need to be licensed to practice law and may be a person of the party's choice. If the party does not have an advisor present at the hearing, the College will provide one free of charge; an advisor may be, but is not required to be, an attorney. During the hearing, the advisor may advise his or her party but does not have a speaking role other than cross-examination as explained below.
- vii. Questioning and Cross-Examination
  - a. A Decision Maker may question parties and witnesses.
  - b. The Decision Maker must permit each party's advisor to ask the other party and all witnesses all relevant questions, including those challenging credibility. Such cross examination at the live hearing must be conducted directly, orally, and in real time. A party may not personally cross-examine another party or a witness. At either party's request, the College will permit the live hearing to occur with the parties located in



separate rooms with technology enabling the Decision Maker and parties simultaneously to see and hear the witnesses answer questions. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. A witness is not required to answer any question the Decision Maker determines to be irrelevant.

- c. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant unless they are offered to prove that someone other than Complainant committed the conduct Complainant alleges or they concern specific incidents of the Complainant's prior sexual behavior with respect to Respondent and are offered to prove consent.
  - d. If a party or witness does not submit to cross-examination at the live hearing, the Decision Maker may not rely on any statement of that party or witness in reaching a determination of responsibility. However, the Decision Maker may not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- viii. Hearings may be conducted with all parties physically present in the same geographic location or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants to see and hear each other.
  - ix. The College will create an audio or audiovisual record or transcript of the live hearing and make it available for parties to inspect and review.

#### C. Determination Regarding Responsibility, Sanctions, and Remedies

- i. The Decision Maker will issue a written determination regarding responsibility by applying a preponderance of the evidence standard to all evidence from the investigation and the hearing; this standard will apply to all Respondents including students, faculty, and staff members and to all Formal Complaints at Wabash. Applying that standard, if the Decision Maker determines that it is more likely than not that Respondent committed alleged acts constituting Sexual Harassment, he or she will find the Respondent responsible for violating this policy.
- ii. The Decision Maker's written decision will include the following information:
  - a. Identification of the allegations potentially constituting Sexual Harassment;
  - b. 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 hearing held;
  - c. Findings of fact supporting the determination;
  - d. Conclusions regarding the application of this Title IX policy and/or the Gentleman's Rule to the facts;
  - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanction imposed upon the Respondent, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the Complainant; and



- f. The procedures and permissible bases for the Complainant and Respondent to appeal.
- iii. The College will provide the written determination to the parties simultaneously. The determination becomes final either on the date the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
- iv. If the Respondent is a student and found responsible for violating this policy, and if the Decision Maker is not the Dean of Students, the Decision Maker will consult with the Dean of Students to determine the corrective actions or sanctions to resolve the case. The Decision Maker will outline any such corrective actions or sanctions in the written determination.
- v. When the Respondent is a student, potential sanctions include formal reprimand, disciplinary probation, suspension, expulsion, and other appropriate educational sanctions. When the Respondent is an employee, corrective actions may include coaching, development plans, reduction in supervisory duties and leadership responsibilities, changes in salary, suspension, termination, and other appropriate corrective actions.
- vi. If the Respondent is an employee and found responsible for violating this policy, the Decision Maker shall consult with the Director of Human Resources to determine the corrective actions or sanctions to resolve the case consistent with any other policy or document applicable to the Respondent's employment at the College.
- vii. The Title IX Coordinator is responsible for effective implementation of any remedies under this policy. Corrective actions or sanctions will not take effect until after any appeals have been completed.

## APPEALS

- A. Within ten (10) days of receiving the decision, any party may file a written appeal with the Title IX Coordinator from a dismissal of a Formal Complaint or from a determination regarding responsibility.
- B. Appeals may be filed due to:
  - i. A procedural irregularity that affected the outcome of the matter;
  - ii. New evidence that was not reasonably available at the time the determination of responsibility or dismissal was made and that could affect the outcome of the matter; and
  - iii. The Title IX Coordinator, investigator, or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
- C. The Title IX Coordinator will notify the other parties in writing when an appeal is filed and implement an appeal process equally for both parties. The College will give the parties a reasonable and equal opportunity to submit a written statement in support of, or challenging, the outcome. The Title IX Coordinator will appoint a College appeals officer who will decide the appeal; the College appeals officer cannot be the Title IX Coordinator, investigator, Decision Maker, or any person who attempted to facilitate an informal resolution in the matter and may not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The College official deciding the appeal will issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties.

**RECORDKEEPING**

- A. The College will maintain for seven (7) years records of:
  - i. Each Sexual Harassment investigation, including any responsibility determination and any hearing recording or transcript, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant;
  - ii. Any appeal and its result;
  - iii. Any informal resolution and its result; and
  - iv. All materials used to train Title IX Coordinators, investigators, decision makers, and persons facilitating informal resolutions, which must also be posted on the College website.
- B. The College will maintain for seven (7) years records of any actions, including any supportive measures, taken in response to a report or Formal Complaint of Sexual Harassment, including the basis for its conclusion that its response was not deliberately indifferent and documenting that it has taken measures to restore or preserve equal access to its education program or activity. If the College does not provide supportive measures, it will document why that response was not clearly unreasonable under the known circumstances.

**TRAINING**

- A. The College will provide appropriate training to individuals serving as the Title IX Coordinator, informal resolution facilitators, investigators, Decision Makers, and College appeals officers.
- B. Title IX training will be offered to faculty and staff annually; to students during new student orientation; and on other appropriate occasions.