

WESLEYAN UNIVERSITY

POLICY PROHIBITING SEXUAL MISCONDUCT

Effective August 14, 2020

Wesleyan is an institution devoted to learning, openness, and the life of the mind. It follows that its character can be measured in part by the kind of human relationships built and sustained within this small but complex environment. Wesleyan strives to be a community built upon mutual trust and respect for its constituent members: students, faculty, staff, and those visiting or under temporary contract. A community will flourish only to the degree that the virtues of mutual respect, generosity, and concern for others are maintained. Therefore, it is vitally important that harassment and discrimination in all their forms not be tolerated and Wesleyan has several policies and practices to achieve this result.

The purpose of this Sexual Misconduct Policy and the related process set forth below is to make clear that the University is committed to providing an environment of well-being, learning, and accountability for its members by preventing the occurrence of many forms of sexual misconduct and addressing its effects. The forms of misconduct are defined in the *Definitions* document found here: [INSERT LINK](#) (*Note that the *Definitions* document may be updated to reflect legal and regulatory changes, as well as to provide clarity if the Wesleyan community expresses broad confusion over any defined terms in the Policy, so please refer back for the most updated content.)

Process for Addressing Employee Sexual Misconduct**

The University follows through on its commitment to respond appropriately to sexual misconduct in different ways, as appropriate to the case at hand. This includes a formal complaint process, as well as an informal resolution process, in which parties can seek to resolve their concerns outside of a more formal process. These processes are discussed below, but you are encouraged to discuss these different processes with Human Resources, the Cabinet member for your area and/or the Title IX Coordinator. It is important to understand that if you share personal experiences with certain individuals on campus, they, in turn, may be required to share specific information with the Title IX Office. You may also discuss this process with a confidential resource, and that individual would not need to report anything you share with them. You should also feel free to ask the Title IX Office any questions, provided you do not provide specific personal information before you are ready to file a report. (This information is shared so that community members can control any disclosures that they make. The Title IX Office is obligated to take certain actions in certain situations if it has actual knowledge of sexual misconduct.)

Policy Applicability **Effective August 14, 2020**

The new Title IX regulations, at 34 C.F.R. § 106, require certain additional procedural requirements for matters falling within the University's Policy Prohibiting Sexual Misconduct (the "Sexual Misconduct

Policy”). The Sexual Misconduct Policy is designed to implement these federal requirements and, as it defines the requirements of several federal laws, it shall supersede all other policies or processes under which such conduct would otherwise be adjudicated.

While Wesleyan reserves the right to generally modify these processes as appropriate (pursuant to Section V(D) of the Sexual Misconduct Policy), any such modification will be set forth in direct communications with the party or parties. In the absence of explicit modification, all Wesleyan community members should assume that the Sexual Misconduct Policy and process will apply as stated.

***for the purpose of this policy, employee refers to all faculty and staff employed by Wesleyan University*

The following process describes how the University will investigate a report that an individual has engaged in prohibited conduct that could violate this Sexual Misconduct Policy.

I. Initial Steps

After receiving a report of conduct that could fall under the Sexual Misconduct Policy, the Title IX Coordinator will take a number of initial steps; these initial steps are not an investigation. Rather, these initial steps will enable the University to assess the need to take any immediate action to address the safety and health needs of the parties involved in a matter, to help the parties determine the next appropriate steps, whether under this Policy or another policy or process.

These initial steps may include, but are not limited to, the following:

- A. Initial Contact.** The Title IX Coordinator will contact the party making the initial allegation (the “Reporting Party”) and encourage them to meet virtually or in person to discuss the nature and circumstances of the reported conduct and review relevant information that is available, and describe the various options and resources available.
- B. Supportive Measures.** Regardless of whether a Reporting Party decides to file a Formal Complaint or not, they may be entitled to supportive measures. Supportive measures are defined in LINK.
- C. Interim Restrictions.** During the pendency of an investigation and hearing (discussed below), the University reserves the right to explicitly prohibit either party from entering upon the University’s property or participating in any activities absent written authorization from an appropriate University official. The failure of either party to comply with an interim restriction such as this may lead to additional disciplinary action that can be determined under this or separate policies, as appropriate. The decision to impose interim restrictions will be communicated by the Title IX Coordinator in writing and parties will be informed of any appellate rights. The University may be limited in its notification in certain situations when student or employee privacy issues limit disclosures.
- D. Discussion of Process.** The Title IX Coordinator will describe the Sexual Misconduct Policy and related process. The Title IX Coordinator will also explain the right to report, as well as the right to delay or decline to report the matter to the University. The Reporting Party may also choose to report such conduct to local law enforcement if the conduct is potentially criminal in nature. Such a report will not change the University’s obligation to potentially investigate the matter, but it may

briefly delay the timing of the investigation if a law enforcement agency requests that the University delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct. The University will typically not consider a criminal proceeding on the same facts in its process because the University does not use the same process or standard of proof as a criminal process. Typically, the University will only inquire about criminal processes to the extent they may impact an individual's ability to access or utilize the University's process. In no instance will an adverse inference follow the fact that either party is involved in the criminal justice system, but certain information may be relevant for the University to consider in limited situations, *e.g.*, if a court enters a separate restraining order, that may be considered while the University determines the restrictions of the parties on campus to maintain the *status quo* pending investigation.

- E. **Formal Complaint.** If the Reporting Party wishes to move forward with a formal complaint under this Policy, the Reporting Party must provide a statement in writing and sign that statement in person or electronically. If, at this time, the Reporting Party requests that the process not move forward or move forward under a different policy, the University will weigh that request against the obligation to address any risk of harm to the Reporting Party, the Responding Party, or other individuals in the community given the nature of the allegation(s). The University reserves the right to move forward with a formal complaint process unilaterally by signing a complaint or statement of allegations against another Responding Party. This will be utilized in limited situations in which the University has a concern related to the safety of the broader University community. In such situations, the University will not be a party to the action, and both the Reporting Party and Responding Party will receive notice, as set forth in Section II.
- F. **Initial Review and Dismissal or Referral, if Necessary.** Upon reviewing any written complaint materials submitted, if the Title IX Coordinator determines that the conduct would, if proven, be prohibited by this Policy, they will move to the next phase of this process. If the conduct, if proven, would not be prohibited by this Policy, the Title IX Coordinator may dismiss the matter without limiting the individual's ability to provide additional information, or the Title IX Coordinator may refer the matter directly to the staff that is charged with executing any other relevant policy that may be implicated. For example, a claim of harassment that is based on race or disability status, even if proven, would not violate the Sexual Misconduct Policy. The University could, in that circumstance, refer the matter directly to the process prohibiting these forms of harassment.
- G. **Consolidation Considerations.** The Title IX Coordinator also has sole discretion to address behavior that may fall outside of the range of behavior prohibited in this Policy, however, any behavior that is included within the formal complaint process must have significant factual overlap and will be entitled to the process set forth below even if the behavior would be subject to a lower review process through another policy. If lesser conduct is included in a Title IX matter defined under this Policy and then the Title IX-related conduct is dismissed for any reason, the Title IX Coordinator has the discretion to refer any remaining matters back to the original process that they would have fallen under if not for the consolidation with the Title IX matter. For example, the University generally prohibits sexual exploitation, but sexual exploitation is not defined as prohibited conduct under the current federal Title IX regulations. If the allegations indicate that the sexual exploitation occurred in the same factual circumstances as a sexual assault, which is included under this Policy, then the matter may be consolidated. If the sexual

assault matter is later withdrawn or dismissed, the University would then have the right to address the sexual exploitation under another relevant policy that prohibits such behavior.

II. The Investigation Phase

- A. Notice of an Investigation.** If it is determined that an investigation will begin, the Title IX Coordinator will prepare a written notice to both the Reporting Party and the Responding Party. The notice will include a description of the allegations as they are understood at the time, the name(s) of the parties, the date(s) and location(s) of the conduct in question, the portions of the Policy that are alleged to have been violated, any interim measures in place of which either party must be made aware, and a statement that the Responding Party is presumed not responsible for the alleged conduct. This written notice does not constitute a finding or a determination of responsibility. Further, the written notice will be updated or amended if new allegations are raised by either party and accepted for investigation throughout this process.
- B. Designation of Investigator.** The Title IX Coordinator will designate at least one investigator to conduct a prompt, fair, and impartial investigation of the reported conduct and prepare a report of investigative findings (the “Investigative Report”). All investigators will be selected from a group of qualified and trained individuals employed by or engaged by the University for the purpose of conducting investigations under the Sexual Misconduct Policy. The Title IX Coordinator will provide the parties with the name of the person(s) assigned to investigate the reported conduct. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the Investigator(s), the parties shall inform the Title IX Coordinator (in writing) of any conflicts of interest with regard to the selected Investigator(s). The Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned as Investigator(s). The Title IX Coordinator’s decision regarding any conflicts is final. The Title IX Coordinator may consult with other University personnel to discuss any conflicts of interest.
- C. Information about Advisors in Connection with this Policy.** In connection with an allegation of prohibited conduct under this Policy, and as defined in the *Definitions* document [\[INSERT LINK\]](#), each party may have a single advisor of their choice present during any formal disciplinary proceeding, including any related meeting, interview, or hearing, held pursuant to the Policy. Except to the extent expressly permitted in the hearing process outlined below, the advisor may advise their respective party privately, but cannot act as a speaking advocate. Wesleyan staff and/or investigators may delay or terminate meetings or hearings, remove or dismiss advisors, and/or proceed with the investigation if an advisor is disruptive or otherwise refuses to comply with the requirements of this Policy. An advisor is subject to the same confidentiality expectations applicable to others in attendance as outlined in the Faculty or Staff Handbook. Accommodations, including unreasonable scheduling changes, generally will not be made for any advisor if they unduly delay the process. The advisor is not permitted to attend a meeting or proceeding without the party they are advising being present without the prior approval of the Title IX Coordinator, at their discretion. The University reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation.
- D. Nature of the Investigation.** The investigation provides an opportunity for fact-finding and will include separate interviews with the Reporting Party, the Responding Party, and any relevant witnesses. The Investigator(s) will provide the parties with advance notice of meetings at which

their presence is required; three days advance notice will be provided to allow the individual sufficient time to prepare for the meeting.

- E. The Parties' Identification of Potential Witness and Documentation.** The parties have the opportunity (and are expected) to provide the Investigator(s) with the identification of potential witnesses who have specific information about the reported conduct and with whom they would like the Investigator(s) to speak. The parties also have the opportunity (and are expected) to provide the Investigator(s) any documentation or other items or questions they would like to be considered. All information described in this section must be presented to the Investigator(s) in writing and include a brief description as to how the persons, documents, and/or items are relevant to the reported conduct. This information must be provided to the Investigator(s) during the Investigation Phase and without delay upon becoming aware of it. The Investigator(s) will exercise discretion in their determination of what information to consider and which potential witnesses can provide relevant information to the investigation. Further, the Investigator(s) have the right to interview any member of the Wesleyan community that may have specific information about the incident that has been reported.
- F. Investigation Prohibitions.** At no point will the investigation require both parties to be in the same room. At no point will either party be permitted to question or cross-examine the other party directly during the investigation, adjudication, or appeal process. The parties may ask questions of the other party and/or witnesses at the Determination Hearing, described below, but all such questions must be asked through the party's advisor. Additionally, the Investigator(s) generally will not gather or consider information related to either party's sexual history unless deemed relevant to the incident in question.
- G. Responding Party Voluntary Agreement to Policy Violation.** At any point prior to convening a Determination Hearing, as described below, a Responding Party may agree in writing to the alleged violation(s) of the Sexual Misconduct Policy and may also accept an outcome as proposed by the Cabinet member for their area.
- H. Other Informal Processes.** At any time prior to convening a Determination Hearing, either party may request an informal resolution of a complaint rather than an investigation and/or hearing by contacting the Title IX Coordinator. The Title IX Coordinator will assess the request for informal resolution against the severity of the alleged violation and the potential risks to campus community members. All parties and the Title IX Coordinator must agree in writing to informal resolution for this option to be used. The Title IX Coordinator will designate a University employee or outside service provider to facilitate a dialogue with the parties in an attempt to reach a resolution. The Title IX Coordinator can end such a process if it becomes unproductive or abusive. The allegation will only be deemed resolved when the parties expressly agree to an outcome that is acceptable to them and which is approved by the Title IX Coordinator in consultation with other appropriate University administrators. Either party may withdraw from the informal resolution process at any time and, unless resolution is reached, the matter will continue through the process. The informal resolution process will be conducted in accordance with procedures specified by the Title IX Coordinator, as determined in their sole discretion.
- I. Investigative Report.** At the conclusion of the Investigation Phase, the Investigator(s) will prepare an Investigative Report, which should include a summary of the factual information presented during the Investigation Phase, a separate section where the Investigator(s) point out

relevant consistencies or inconsistencies (if any) between all sources of information, and a separate optional section describing the Investigator(s) assessment of the credibility of parties and witnesses with regard to the Investigator(s) interactions with them. The Investigator(s) will provide any relevant evidence gathered, whether inculpatory (*i.e.*, proving the responsibility of a party) or exculpatory (*i.e.*, proving that a party did not commit the conduct alleged). The Investigative Report will not include a determination as to whether a party has violated the Sexual Misconduct Policy or what sanctions may be appropriate. These determinations will be made by the Determination Officer, as described below.

J. Notification of Charges and Review by the Parties.

1. The University will inform both parties of their opportunity to review the entire Investigative Report and that they may submit written comments and/or questions about the content of the Investigative Report to the Title IX Coordinator within ten (10) calendar days of the date they are notified that the Investigative Report is available for review. This review will take place at a secure location and/or in a secure manner determined by the University. The time to submit written comments can be extended for a brief period if the Title IX Coordinator concludes, in their sole discretion, that the additional time is warranted. In circumstances where an extension is provided to one party, it will be provided to the other party, as well. Each party may have their advisor present as they review the Investigative Report, but the University reserves the right to create appropriate procedures to protect the privacy and sensitivity of the materials in question.
2. Photographs or any other copies of the Investigative Report are not allowed by either party or advisor. The comments submitted by the parties may not exceed ten (10) double-spaced pages unless a higher page limit is otherwise determined to be necessary and appropriate in the sole discretion of the Title IX Coordinator. After reviewing the submissions, if any, from the parties, the Investigator(s) may determine that either additional investigation is required or no further investigation is needed.
3. If, at any point in this review process or the prior investigation, it becomes apparent that a witness will not take part and subject themselves to examination in the Adjudication Process described in Section III, the Investigator may revise the Investigative Report to remove that information so as not to impact the hearing. If this decision is made prior to the parties' review, it will be noted in a cover memo to the Investigative Report. If the decision is made following the parties' review, it will be communicated to the parties and they will be informed in writing of any information that will be removed prior to the hearing.
4. The Investigative Report will then be submitted to the Title IX Coordinator for review and compilation for the adjudication process. Any submissions made by either party pursuant to this section, as well as any other documentation deemed relevant by the Investigator(s), will be attached to the Investigative Report. When the Investigator(s) have completed any additional fact finding, both parties will be permitted to review the entire Investigative Report as it will be submitted to the Determination Officer, although no further information will be added at this point.

III. Adjudication Process and, if Necessary, Sanction Process

- A. **The Determination Officer.** The Title IX Coordinator will inform the parties of the identity of the Determination Officer. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the assigned Determination Officer, the parties should inform the Title IX Coordinator (in writing) of any conflicts of interest in regard to the selected Determination Officer. If a conflict of interest is raised, the Title IX Coordinator will consider the nature of the conflict and determine if different individual(s) should be assigned to hear the matter. This decision regarding any conflicts is final. The Title IX Coordinator will then provide the Determination Officer with the Investigative Report and set a subsequent date for the Determination Officer to hold a hearing to determine responsibility.
- B. **Role of the Determination Officer.** The Determination Officer will preside over the hearings and make all decisions by a preponderance of the evidence as to whether or not the Responding Party violated the policy provisions at issue. The Determination Officer has broad authority to determine the process, timing and conduct of a hearing. For example, the Determination Officer will determine the order of presentation and timing of the different hearing components. The Determination Officer will also determine what evidence is relevant and what information and questions are relevant and/or permissible.
- C. **Role of Advisors at the Hearing.** Each party may have an advisor of their choice present at a hearing for the limited purpose of conducting witness examinations on behalf of that party. Advisors may be, but are not required to be, attorneys. If a party does not have an advisor of their choice present at a hearing, Wesleyan will, without fee or charge to the party, provide an advisor of Wesleyan's choice for the limited purpose of conducting witness examinations on behalf of that party. No later than ten (10) calendar days before the hearing, parties should inform the Title IX Coordinator of the identity of any advisor of choice who will accompany them to the hearing, so that Wesleyan will know whether or not it needs to arrange for the presence of a Wesleyan-provided advisor.
- D. **Hearing Process: Advisor Examinations.** At a time and manner deemed appropriate by the Determination Officer, the advisor for each party will be permitted to ask the other party and any witnesses all relevant examination questions and follow-up questions, including those challenging credibility. Except for that limited role, advisors may not participate actively in the hearing and may not speak or otherwise communicate on the part of the party that the advisor is advising. However, the advisor may consult privately in a non-disruptive manner with their advisee during and/or at a recess in the hearing. Scheduling accommodations generally will not be made for advisors if they unduly delay the process. As per the **Rules for Hearing Decorum**, Wesleyan reserves the right to take appropriate action regarding any advisor who disrupts the process or who does not abide by the restrictions on their participation as determined in the sole discretion of the Determination Officer. In limited situations, this may include exclusion of the advisor from the hearing and the appointment of an alternate Wesleyan-provided advisor.
- E. **Hearing Process: General Restrictions.** Questions and evidence about sexual predisposition or prior sexual behavior are generally not relevant, unless such questions and evidence about the prior sexual behavior are offered to prove that someone other than the Responding Party committed the conduct alleged, or if the questions and evidence concern specific incidents of the Reporting Party's prior sexual behavior that are offered solely to prove consent.

- F. **Hearing Process: Privileged Information.** Information protected under a legally recognized privilege (such as, for example, privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), are not admissible unless the person holding the privilege has waived the privilege in writing.
- G. **Hearing Process: Virtual Option.** At the request of either party, Wesleyan will provide for the hearing to occur with the parties located in separate rooms with technology enabling the hearing officer and parties to simultaneously see and hear the party or the witness answering questions. Live hearings may be conducted with all parties physically present in the same geographic location or, at Wesleyan's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- H. **Hearing Process: Examination Requirement.** In accord with federal regulations, if a party or witness does not submit to examination at the live hearing, the Determination Officer will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Determination Officer will not draw an adverse inference regarding responsibility based *solely* on a party's or witness's absence from the live hearing or refusal to answer examination or other questions.
- I. **Sanctioning Consistency.** In the instance that the Determination Officer determines that a party is responsible for violating this Policy, they may then request from the University information on prior sanctioning decisions in factually similar matters so that the Determination Officer can apply a consistent sanction in the matter at hand.
- J. **Notification of Decision.** Upon reaching a determination of responsibility, the Determination Officer will provide a written notification of the decision and rationale to the Title IX Coordinator. The notification will consist of a summary of the allegations and determination(s) made by the Determination Officer with respect to responsibility and any sanctions that are imposed. The notification will also include the procedures for either party to appeal, as set forth in Section IV, below. The University reserves the right to inform other University officials with a legitimate educational interest about the outcome of the finding. This could include, but is not limited to, notice to administrators charged with executing the sanction, athletic team coaches, or others that may have a role in carrying out the sanction or any ongoing supportive measures for either party.
- K. **Record of Hearings.** Wesleyan will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. It will not be provided for distribution and Wesleyan will provide the same protective measures as used in Section II regarding the parties' review of investigative reports.

IV. Appeals

- A. **Grounds and Timing for Appeals.** The following process applies to all appeals. Within five (5) business days of the delivery of the decision, either party may appeal the decision by submitting to

the Title IX Coordinator a letter stating why they believe the decision was inappropriate based on one or more of the following limited grounds:

1. Procedural error that materially prejudiced the outcome; and/or
2. Newly discovered material information that was not known/available to the Investigator(s) or the Determination Officer and which likely could have changed the finding of responsibility or the sanction imposed had it been available.
3. Bias or a conflict of interest with regard to the Title IX Coordinator, Investigator(s), or Determination Officer that materially impacted the outcome or the sanction.

- B. Form of Submission.** The party submitting the appeal must set forth in detail the grounds for review and must attach all materials that they wish to have considered in the appeal process. Following the submission of an appeal by either party, the appeal will be provided to the other party and they may give a limited response to the appeal that must be submitted within three (3) business days.
- C. Extensions of Time.** Extensions of time to respond must be requested with the Title IX Coordinator and will be provided in the sole discretion of that person. The request should state explicitly the reasons for the requested extension. Any extension of time granted to one party will be automatically extended to the other party. Both parties will be informed of the extension in writing and simultaneously.
- D. The Appellate Officer.** In the instance of an appeal, the information is forwarded to the Vice President for Student Affairs or their designee. Both parties will be provided with the name of the Appellate Officer prior to the materials being provided to them. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the Appellate Officer, the parties should inform the Title IX Coordinator in writing of any conflicts of interest in regard to the assigned person. The Title IX Coordinator will consider the nature of the conflict and determine if different individual(s) should be assigned to review the appeal.
- E. Sanctions Pending Appeal.** Sanctions of all types (including, but not limited to, suspension, dismissal, or separation) may be imposed while an appeal is pending at the sole discretion of the University.

V. Additional Issues

- A. Disability Accommodations.** Wesleyan is committed to ensuring that all community members, and applicants, have an equal opportunity to participate in all of its programs and activities. If any person requires an accommodation, because of disability, to access any part of this process, they may make that request to Human Resources. Any accommodations will be provided in consult with the Title IX Coordinator to ensure it does not impact the rights or protections of any party or witness.
- B. Duty of Honesty.** All parties and witnesses are obligated to be completely honest during the course of the entire process set forth under this Policy. Any person who knowingly makes a false statement – either explicitly or by omission – in connection with any part of the process may be subject to separate disciplinary action. A report made in good faith, however, is not considered

false merely because the evidence does not ultimately support the allegation of a violation of the Policy.

- C. **Duty of Cooperation.** All parties and witnesses are obligated to cooperate with the Title IX Coordinator and any persons charged with implementing the Policy. Any person who knowingly interferes with the actions taken to implement the reporting, investigation, or resolution of matters under the Policy may be subject to separate and/or additional disciplinary action. Please note that the Duty of Cooperation will not be utilized to undermine an individual's decision not to take part in this process if it would force them to forfeit any constitutional rights in a criminal investigation involving the same or similar facts and circumstances.
- D. **Special Situations.** The University retains the right to determine, in its sole discretion, if it will address a report of conduct under this Policy administratively and outside of the process described herein when the safety of the University community is at risk, if there are extenuating circumstances involving either of the parties, or if the Title IX Coordinator, in consultation with appropriate administrators, determines it is in the best interest of the University and/or the University community to do so. If the University utilizes this provision to alter the process set forth in this Policy, it will clearly communicate change to the parties in a reasonable and timely manner.
- E. **Delegation.** Where the Title IX Coordinator or any other University official or employee is listed as the designated point of contact for any role in the Policy, the Title IX Coordinator may designate another qualified member of the University community to assume the role at issue, as necessary and appropriate. Any delegation must be approved by the Title IX Coordinator and the appointed individual will be identified to the parties.