

Settlement Agreement

between

The United States of America

and

Wheaton College

## **RESOLUTION AGREEMENT**

Between Wheaton College and  
the U.S. Department of Justice

DOJ DJ Number 169-36-71

### **BACKGROUND AND JURISDICTION**

The U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section (“Department” or “United States”), has completed the above-referenced investigation and compliance review of Wheaton College’s (“College”) handling of allegations of sexual harassment, including sexual assault, under Title IX of the Education Amendments of 1972 (“Title IX”).

The Department initiated its investigation in August 2015 after receiving a complaint about the College’s handling of a report of sexual assault. That complaint raised a number of concerns regarding the College’s compliance with Title IX, and on August 31, 2015, the Department notified the College that it was conducting a full investigation and compliance review. The United States’ investigation and review of the College examined its handling of reports of sexual harassment and assault in the 2012-13, 2013-14, and 2014-15 school years, and a portion of the 2015-16 school year. Although initiated after the receipt of one complaint, the Department investigated the College’s response to multiple allegations of sexual assault and other forms of sexual harassment during this time period.

During its investigation, the Department found that the College’s response to sexual assaults and other sexual harassment of students improved significantly since 2012. With the assistance of a grant from the Department’s Office on Violence Against Women, the College has made substantial efforts to improve its policies and to provide the campus community with trainings on a wide variety of topics important to the College’s prevention of and response to reports of sexual misconduct. Despite these positive changes, the United States found that the College’s response to some reports of sexual assault and retaliation during the time period covered by this investigation either fell short of what Title IX requires or raised Title IX compliance concerns. These findings are summarized briefly as follows:

**First**, the Department found that individuals responsible for investigating and adjudicating complaints of sexual misconduct do not or did not fully understand their roles and responsibilities in the process. These misunderstandings appear to have contributed to at least one inequitable grievance process in a sexual assault case.

**Second**, the Department found that the College has not consistently provided or enforced interim measures designed to protect students in the educational environment and ensure their equal access to education. For example, in one instance, the College did not adequately investigate an alleged violation of a no-contact order by the respondent in a reported sexual assault case, even

after the complainant alleged to the College that she had evidence of an intentional violation by the respondent.

**Third**, the Department is concerned about the College's response to at least one report of retaliation against a student who participated in the Title IX grievance process, and believes the College should improve its response to reports of retaliation so that students feel safe coming forward and to make clear that that it does not tolerate retaliation.

**Fourth**, the Department found that the College does not take adequate steps to ensure that all reports to responsible employees of sexual harassment, including sexual assault, are shared with the Title IX Coordinator in a timely fashion, and that the College should clarify responsible employees' reporting obligations.

**Finally**, the Department and the College identified a need for improvement in the College's documentation process to better record its responses to reports of sexual misconduct and retaliation, and to ensure timely and effective communication among responsible employees.

Through this Resolution Agreement, the College further indicates its willingness to implement actions that remedy the United States' concerns as expressed in the Letter of Findings and to ensure the College's compliance with Title IX.

### **TERMS OF THE AGREEMENT**

To resolve the findings and concerns of the United States, the College will take effective steps designed to: prevent sex-based harassment and retaliation in its education programs and activities, including clarifying its policies and procedures applicable to various types of sex-based harassment and retaliation; appropriately respond to conduct that may constitute sex-based harassment or retaliation, including by taking immediate and appropriate steps to investigate or otherwise determine what occurred; and eliminate any hostile environment that arises from sex-based harassment and remedy its effects, as appropriate. In turn, the Department will not initiate litigation regarding the United States' Title IX findings raised as of the date of this Agreement, provided the College implements the provisions of this Agreement in good faith and subject to the terms in Section VI below.

As used in this Agreement, the term "sexual misconduct" means the conduct prohibited by the College's Sexual and Gender-based Misconduct Policy. For purposes of this Agreement, "sex discrimination" includes sexual misconduct, other discrimination on the basis of sex, and retaliation relating to complaints of sex discrimination. The term "employee" means any non-student employee of the College, including but not limited to faculty, administrators, Wheaton Public Safety Department ("PSD") employees, and staff.

This Agreement will remain in force for at least three academic years, and will not terminate until at least 60 days after the United States has received all of the reporting required through the second semester of the 2018-19 school year. The United States will monitor the implementation of the Agreement until it determines that the College has fulfilled the terms of this Agreement and is in compliance with Title IX and its implementing regulations.

## **I. POLICIES AND PROCEDURES**

- A. By December 31, 2016, the College will draft revisions to its policies and procedures related to sex discrimination to clarify conduct prohibited by Title IX, where and how students should report various types of sex discrimination, and procedures to be followed in connection with reports of sex discrimination. The College policies and procedures to be revised include, but are not limited to: the Wheaton College Sexual and Gender-based Misconduct Policy and handouts on sexual assault resources and procedures to be followed in investigating and adjudicating cases under the policy; the Anonymous Sexual Assault Tracking Form; the Student Athlete Handbook; the Faculty Handbook; Memorandum to Faculty, Staff and Student Employees re: Important Policies; Residential Life Staff Handbook; handouts discussing the Title IX reporting process; Confidentiality Policy; checklists for resident advisors, preceptors, and other responsible employees; Wheaton Public Safety Department Orders and Memorandum of Understanding with the Norton Police Department; and training materials related to Title IX that discuss policies and procedures. The College will ensure that these policies and procedures provide an easily accessible and user-friendly system for the prompt and equitable resolution of complaints alleging sex discrimination, use consistently defined terms and reporting options, and include, at a minimum, the following:
1. a definition of sexual harassment that includes unwelcome conduct of a sexual nature, same-sex harassment, and harassment by third parties and a clear explanation of when such harassment violates the College's policies;<sup>1</sup>
  2. an explanation of how to file reports pursuant to the grievance procedures and clarification of other types of reports that may be filed and with whom those reports should be filed (*e.g.*, providing more and clearer notice to students of how to report a crime to law enforcement);
  3. clarification that reports of sex discrimination need not be made in writing, and that students will not be required to provide a written statement before the College will take steps to investigate or otherwise determine what occurred so that appropriate steps may be taken, including the provision of appropriate interim measures;
  4. notice to all members of the College community of the grievance procedures that apply to different types of reports of sex discrimination perpetrated by employees, students, or third parties against students, and mandating involvement by the Title IX Coordinator in all such reports made to responsible employees;

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<sup>1</sup> Consistent with Title IX and its regulations, the revised policies should make clear that they do not apply to curriculum or in any way prohibit or abridge the use of particular textbooks or curricular materials. See 28 C.F.R. § 54.455; 34 C.F.R. § 106.42. When revising its policies, the College also will review the Department of Education's July 28, 2003, Dear Colleague Letter on the First Amendment, <http://www.ed.gov/ocr/firstamend.html>, and October 26, 2010, Dear Colleague Letter on harassment and bullying, <http://www.ed.gov/ocr/letters/colleague-201010.html>.

5. a requirement that all responsible employees who are aware of sex discrimination report to the Title IX Coordinator within 48 hours of becoming aware of such discrimination: the name of the alleged perpetrator (if known), the student who experienced the alleged sex discrimination, other students involved in the alleged discrimination, as well as relevant facts, including the date, time, and location;
  6. an explanation of the reporting requirements for the Wheaton Public Safety Department consistent with Title IX, the 2013 Amendments to the Violence Against Women Act, and related Clery Act regulations of 2014;
  7. clarification that if a complainant requests confidentiality, the Wheaton Public Safety Department will provide to the Norton Police Department only the date, time, location, and description of the incident unless the complainant explicitly approves the release of other information;
  8. provision of tools for Case Investigators and Sexual Misconduct Hearing Board members to clarify their roles and responsibilities, such as: investigator checklists, sample investigative reports, and other resource materials to clarify key concepts, including how to assess credibility, how to assess victim responses to sexual assault, how to collect and weigh evidence, how to engage in trauma-informed interviewing, and how to apply appropriate legal standards;
  9. an explicit prohibition against retaliation that makes clear that the College does not tolerate retaliation in any context and that:
    - a. defines retaliation in a manner that is consistent with federal law and accessible to students, and provides examples of such conduct to promote understanding;
    - b. states that allegations of retaliation should be immediately reported to the Title IX Coordinator or other designated person, and will be investigated by the College under the same processes and standards outlined in the Title IX grievance procedures; and
    - c. states that the College will proactively follow up with students to determine whether any retaliation or new incidents of harassment have occurred.
- B. On or before December 31, 2016, the College will submit to the United States for review and approval proposed revisions of all policies, procedures, and other documents related to sex discrimination. If the parties are unable to agree on the revisions within 30 days of the United States providing notice of any comments or concerns, the United States may pursue relief under the enforcement provisions of Section VI.C below.
- C. The College will adopt the revised policies and procedures in this Section I within 14 calendar days of approval from the United States. It is the intent of the parties that the revised Sexual and Gender-Based Misconduct Policy will be adopted no later than August 24, 2016 or within 5 calendar days of the United States' final approval of said Policy.

- D. Once the College adopts policies and procedures related to sex discrimination pursuant to the terms above, the College will not substantively modify those policies and procedures during the period of the Agreement without the approval of the United States. Such approval will not be unreasonably withheld. All requests to modify such policies and regulations must be made in writing at least 30 days before the College intends to adopt the modification.

## **II. NOTICE OF REVISED POLICIES AND PROCEDURES**

By the start of the 2016-17 academic year, or within 5 calendar days of receiving the United States' final approval of the Sexual and Gender-Based Misconduct Policy referenced in Section I, the College will provide all students and employees with written notice regarding the revised policies prohibiting sex discrimination and the grievance procedures for resolving sex discrimination complaints required by Section I, as well as information on how to obtain a copy of the policies and grievance procedures. The College, at a minimum, will make this notification available through the College's website, electronic mail messages to employees and students, any regularly issued handbooks, conduct codes, or newsletters (in print or online), and any other means of notification the College can use to ensure that the information is widely disseminated.

## **III. TRAINING OF EMPLOYEES AND PROFESSIONAL DEVELOPMENT**

- A. The College will revise its Title IX training and provide the Title IX training by December 31, 2016 to its Title IX Coordinator, Case Investigators, members of the Sexual Misconduct Hearing Board, and any other College employees (e.g., Public Safety Officers) who will be directly involved in processing, investigating, and/or resolving complaints of sex discrimination or who will otherwise assist in the coordination of the College's compliance with Title IX.<sup>2</sup> This training will be in person and cover:
1. the roles and responsibilities of individuals responsible for investigating and adjudicating complaints of sexual harassment, including sexual assault, how to assess victim responses to sexual assault, and how to assess credibility;
  2. recognizing and appropriately responding to allegations, reports, and complaints of sex-based discrimination, including conducting interviews of victims of sexual assault and communicating in a fair, non-biased, and objective manner that does not discourage victims from reporting or continuing with their complaints (such training shall include role-playing and other practice activities);
  3. how to conduct and document adequate, prompt, reliable, and impartial Title IX investigations, including the appropriate legal standards to apply in a Title IX

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<sup>2</sup> The College will not directly utilize any of the individuals listed in Section III(A) in the processing, investigating, and/or resolving of sex discrimination claims until such time as they have received the training outlined in Sections III(A)(1)-(6).

investigation, how they differ from those in a criminal investigation, and how to collect and weigh different types of evidence;

4. how to notify students of the right to file a criminal complaint and how to file one;
  5. the definition of retaliation in the revised Policy and the need to investigate and take prompt and effective action to end retaliation;
  6. the need to investigate allegations of violations of no-contact orders and take prompt and effective action if a violation is found;
  7. a refresher training or other summary review to be provided at the time they are called upon to serve as Case Investigators or Sexual Misconduct Hearing Board members to ensure that those responsible for effectuating the grievance process fully understand the concepts learned in these trainings, as well as their role in applying them; and
  8. a written assessment requiring participants to demonstrate that they have learned the material in the Title IX training.
- B. By December 31, 2016, the College will provide revised Title IX training to all resident assistants, preceptors, the Counseling Center, Academic Advisors, and other College employees who are likely to be the first to receive complaints or other reports of sex discrimination. The training will be in person and instruct attendees on recognizing and appropriately responding to initial allegations, reports, and complaints of sex discrimination, including responding in a trauma-informed way that does not discourage victims from reporting. The training also will instruct attendees on:
1. how students may invoke the Title IX complaint and grievance procedures required by Section I above, and the first responder's responsibility to facilitate the filing of such complaints;
  2. clear examples of what types of actions may constitute sex discrimination in the College's programs or activities, including but not limited to different types of sex-based harassment and retaliation, and what may provide the basis for a complaint under the College grievance and other procedures;
  3. how the Title IX process differs from the criminal one, how to notify complainants of the right to file a criminal complaint, and how to file one;
  4. how to contact the Title IX Coordinator; and
  5. which employees are designated as confidential resources, which are responsible employees, how responsible employees are defined and designated by the College, and what information regarding sex discrimination allegations must be shared by responsible employees with the Title IX Coordinator.

C. By December 31, 2016, the College will provide revised Title IX training to its students and will provide such training to all new students on an annual basis. The training will be in person and provide attendees with instruction on:

1. how students may invoke the Title IX complaint and grievance procedures required by Section I above;
2. clear examples of what types of actions may constitute sex discrimination in the College's programs or activities, including but not limited to different types of sex-based harassment and retaliation, and what may provide the basis for a complaint under the College's Title IX grievance procedures;
3. how the Title IX grievance process differs from the criminal one;
4. how to contact the Title IX Coordinator;
5. the College's prohibition of retaliation; and
6. no-contact orders and the ramifications for individuals who violate such orders.

D. Beginning with the 2016-17 academic year, the College will ensure that all new employees complete the training required of them under Sections III.A-B above within one year of their employment start date.

#### **IV. TRACKING OF COMPLAINTS OF SEX DISCRIMINATION**

By December 31, 2016, the College will develop, and submit to the United States for review and approval, a system for tracking and reviewing reports (including reports that do not result in the filing of a discrimination complaint), investigations, interim measures, and resolutions of student and employee conduct that may constitute sex discrimination to ensure that such reports are adequately, reliably, promptly, and impartially investigated and resolved. The system will require, at minimum, that:

- A. all responsible employees will notify the Title IX Coordinator within 48 hours of receiving information about sex discrimination, regardless of whether a written report or formal complaint was filed, for the purpose of ensuring that individuals who allege discrimination are consistently and promptly provided necessary services, interim measures, and information about their Title IX and criminal reporting options;
- B. the Title IX Coordinator will enter into an electronic, confidential database or spreadsheet at least the following fields of information: the date and nature of the complaint or other report (*e.g.*, online form, walk-in, bystander, or mandatory responsible employee report); the name of the complainant or that the complaint was anonymous; the name of the person(s) who received the complaint or made the report; the name(s) of the accused; complainant and accused status (*e.g.*, student, professor, nonstudent); the location of the incident; whether a Clery Warning was issued, and when; the name(s) of the person(s) assigned to investigate the complaint, take any interim measures; and serve on the Sexual Misconduct Hearing Board (where relevant); the interim measures taken, if any; the dates and nature of all follow-ups, including check-ins regarding the effectiveness of

supportive measures and the existence of possible retaliation; the date of any findings; the date of any hearing; the dates of any appeals; and a summary of the findings at the initial, hearing, and appeal stages, including any actions taken on behalf of the alleged victim and any disciplinary or other actions taken against the accused; and

- C. the Title IX Coordinator will maintain records of all reports, investigations, findings, the basis for those findings, and appeals, including, but not limited to: the report or complaint; the names of the complainant (if available), the accused, and witnesses; any statements or other evidence submitted or collected; interview notes; correspondence relating to the investigation; actions taken on behalf of the alleged victim(s) of sex discrimination; actions taken against the accused, including any temporary measures (e.g., temporary eviction from College housing); records of findings communicated to the parties; records of any appeals; records of any discipline or proposed discipline; and records of any retaliatory behavior reported and all actions taken by the College to respond to such reports and to affirmatively follow up to determine whether any retaliation has occurred.

After the United States has approved the tracking system, the College will implement it and once a year evaluate whether any modifications are needed. The College will submit any proposed modifications in writing to the United States for review and approval.

## **V. REPORTING PROVISIONS**

### **A. Title IX Policies and Procedures**

- The College will provide the United States all documents and information identified in Section I in accordance with the timelines set forth above.

### **B. Notice of Revised Policies and Procedures**

- Within 45 calendar days after notice is provided to students and employees of the new grievance procedures, the College will provide the United States with documentation that it has implemented Section II of this Agreement, including copies of the written notices issued to students and employees regarding the new Title IX procedures; a description of how the notices were distributed; and a link to its webpage where the revised Title IX procedures are located.

### **C. Training and Professional Development**

- The College will provide the United States with the revised training materials, with revisions clearly marked or described separately, conducted pursuant to Section III.A-C by December 31, 2016. The College will also provide information describing the expertise and experience with regard to Title IX of the person or persons conducting the training. If the United States chooses to provide comments on the proposed training or trainers, it will do so within 45 days of receipt of the materials.

#### **D. Tracking of Sex Discrimination Complaints**

- By July 15, 2017, and thereafter by July 15, 2018, and July 15, 2019, the College will provide the United States with documentation demonstrating implementation of Section IV above, including a summary of all sex discrimination allegations, including sexual harassment, sexual assault, and retaliation, reported to the College's Title IX Coordinator during the preceding school year, information about the individual(s) who received and processed the initial complaints, and the outcome of the Title IX investigations. The College also will provide an electronic database or spreadsheet of all the data required by Section IV.B above.

#### **E. Climate Survey Results**

- By July 31, 2017, and thereafter by July 31, 2018, and July 31, 2019, the College will provide the United States with the results of its annual Student Climate Survey. While the College will retain many of the questions in the survey across years to assess how survey responses evolve under this Agreement, the College anticipates that its 2017 and 2019 climate surveys will focus specifically on sexual respect, with an emphasis on sexual misconduct and bystander intervention. The College anticipates that its 2018 climate survey will focus on substance abuse and reference sexual misconduct in that context.

### **VI. ENFORCEMENT**

- A. The United States may enforce the terms of this Agreement, Title IX, and its implementing regulations. If the United States determines that the College has failed to comply with the terms of this Agreement or has failed to comply in a timely manner with any term of this Agreement, it will so notify the College in writing and will attempt to resolve the issue(s) in good faith with the College. If the United States is unable to reach a satisfactory resolution of the issue(s) within 60 days of providing notice to the College, it may initiate civil proceedings in federal court to enforce the Agreement and/or the College's underlying obligations in Title IX and its implementing regulations.
- B. If the College, despite its good faith efforts, anticipates that it will be unable to meet any timeline set forth in this Agreement, it will immediately notify the United States of the delay and the reason for it. The United States may provide a reasonable extension of the agreed timeline.
- C. The College understands that the United States will monitor this Agreement until it determines that the College has fulfilled the terms of this Agreement and is in compliance with Title IX and its implementing regulations, which were at issue in this case.
- D. The College further understands that the United States, consistent with its responsibility to enforce Title IX, retains the right to evaluate the College's compliance with this Agreement and any alleged future violations of Title IX, including the right to conduct site visits, interview College staff and students (including *ex parte* communications with students and employees other than College administrators), and request such additional

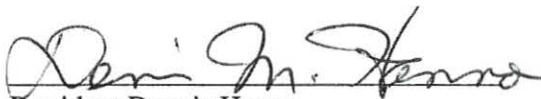
reports or data as are necessary for the United States to determine whether the College has fulfilled the terms of this Agreement and is in compliance with Title IX and its implementing regulations. DOJ will, to the extent possible, work cooperatively with the College to conduct further interviews with students or employees.

- E. By signing this Agreement, the College agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. To ensure compliance with this Agreement, the United States may require additional monitoring reports or the ability to inspect data or other information maintained by the College as determined necessary by the United States.

**VII. MISCELLANEOUS**

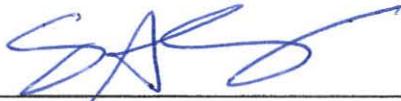
- A. This Agreement is for the purpose of resolving a disputed claim and is not, and will not be construed as, an admission of liability, fault, or wrongdoing of any kind by the College.
- B. This Agreement will remain in force for at least three school years, and will not terminate until at least sixty 60 days after the United States has received all reporting required by this Agreement through the second semester of the 2018-19 school year.
- C. This Agreement shall not bar any individual from pursuing a complaint under Title IX against the College.
- D. This Agreement has binding effect on the parties, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, assigns, and legal representatives thereof.

Signatures of the Parties to the Resolution Agreement



President Dennis Hanno  
Office of the President  
Wheaton College  
Norton, Massachusetts 02766

Date: September 21, 2016



Shaheena Simons, Chief  
U.S. Department of Justice  
Civil Rights Division  
Educational Opportunities Section

Date: September 21, 2016