

# Criteria for Community Disclosure of Sexual Misconduct

## Introduction

This document serves as a guide in making a decision regarding the possible public disclosure to the Academy community of allegations of sexual misconduct against a current or former faculty and/or staff<sup>1</sup> member of the Academy when the Academy has in hand a serious allegation of sexual misconduct.

## Process

Every time the Academy receives an allegation of sexual misconduct, we make a timely report to the Exeter Police Department regardless of the nature or source of the allegation, and regardless of the extent of supporting proof. The Academy also reports every allegation involving a minor (someone under the age of 18) to the New Hampshire Division of Children, Youth and Families.

We make these reports to comply with our reporting duties under the law and to support the well-being of survivors.

Unless and until these authorities complete their investigative work and the pursuit of any criminal charges that may result, the Academy cannot further investigate on its own, and is not in a position to make a public disclosure.

Once the Academy learns that the Exeter Police Department has closed a case (for example, because the statute of limitations has expired, the survivor has declined to press charges or the alleged perpetrator has died), we are free to move forward with our own investigation. Depending on the nature and extent of information that is available to us, and if there is sufficient information available to us, we work to design an investigation that is as full and fair as is possible.

In almost all cases, this involves enlisting the help of external investigators. We purposefully select trained and experienced investigators whose training includes a focus on conducting trauma-informed interviews. Once the Academy's own investigation is concluded, we use the guidelines presented in the criteria below to determine if public disclosure will be made. Due to a variety of factors, many beyond our control, substantial time can pass between our initial report to the Exeter Police Department and a community disclosure.

Importantly, where a public disclosure is to be made, the disclosure will be made in such a way as to avoid, to the greatest extent possible, inflicting additional harm on survivors, alumni, and others.

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<sup>1</sup> Where there is a serious allegation of sexual misconduct, it is less likely that the person in question will be a current employee, as a matter satisfying these criteria of disclosure is likely to have already resulted in employment termination. Nonetheless, in all cases, applicable employment law will be considered prior to disclosing allegations against a current faculty and/or staff member. In all such cases, the General Counsel will confer with outside employment counsel before any disclosure is made.

## Criteria for Public Disclosure

The following criteria were approved by the Trustees of Phillips Exeter Academy on July 6, 2021 and will be used in deciding whether or not to make a public disclosure of sexual misconduct to the Academy community:

- 1) Is there an admission of guilt by the alleged perpetrator of sexual misconduct? **If the answer is yes, the Academy should make a public disclosure.** If the answer is no, proceed to the next question.
- 2) If there is no admission of guilt, has the alleged perpetrator been investigated and charged with one or more crimes by a competent authority (for example, the Rockingham County Attorney has determined to file one or more criminal charges)? **If the answer is yes, the Academy should make a public disclosure.** If the answer is no, proceed to the next question.
- 3) Has the Academy commissioned a full and fair investigation of the alleged sexual misconduct, the result of which was a finding by the preponderance of the evidence that the alleged sexual misconduct occurred? **If the answer is yes, the Academy will consider making a public disclosure if it finds the presence of one or more of the following factors (in order of relative importance or weight).** If the answer is no, proceed to Question #4 below.
  - a) Is the alleged perpetrator a current or ongoing risk to members of our community?
  - b) If the allegation is historical, would the alleged sexual misconduct, if committed today, violate the Academy's current Faculty Handbook, Staff Handbook, or E Book?
  - c) Has the Academy received multiple allegations of sexual misconduct against the same perpetrator?
  - d) Is there the potential for other unidentified victims of the alleged perpetrator?
  - e) Are the allegations raised against the perpetrator already in the public domain?
- 4) If the Academy commissioned a full and fair investigation of the alleged sexual misconduct, the result of which was that the investigator did not find by a preponderance of the evidence that the alleged sexual misconduct occurred, then the Academy should not make a public disclosure, unless the answers to one or more of the following questions indicate otherwise:
  - a) Are the allegations of sexual misconduct already in the public domain, for example, because the reporting party has made them public? The public domain shall not necessarily include private or limited-access social media groups. If the reporting party (or someone else) has shared allegations only in a private or limited-access social media group, the Academy should consider on a case-by-case basis whether or not this limited disclosure should cause the Academy to make a more public disclosure.

- b) Has the Academy received allegations against the alleged perpetrator from multiple people?
- c) Are there other reasons to make a public disclosure, including a need to defend against allegations which do not appear to be supported by available evidence?