



**Resolution Process for Alleged Violations of the Title IX and Other Sexual Misconduct Offenses
(Process A)**

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Resolution Process for Alleged Violations of the Title IX and Other Sexual Misconduct Offenses (Process A)

The University will act on any formal notice/complaint of violation of the Policy on Equal Opportunity, Harassment, and Nondiscrimination (“the Policy”) that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures, known as “Process A.”

“Process A” applies to:

- Qualifying allegations of Title IX Offenses (as defined in the Policy on Equal Opportunity, Harassment, and Nondiscrimination)
- Allegations of Other Sexual Misconduct Offenses (as defined in the Policy on Equal Opportunity, Harassment, and Nondiscrimination)
- Allegations of the above offenses that would otherwise be “dismissed” under Title IX due to jurisdictional classification (i.e. when the Complainant is a visitor or guest; the off-campus conduct affects a substantial University interest, or effectively deprives someone of access to Wilkes University’s educational program).

The Procedures below may be used to address collateral misconduct (i.e., vandalism, physical abuse of another etc.). If the alleged conduct stems from the same event or course of conduct, it will be processed and adjudicated through “Process A” at the same time.

Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator and/or Deputy Title IX Coordinator initiates a prompt initial assessment to determine the next steps the University needs to take.

The Title IX Coordinator(s) will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a Formal Complaint; and/or

- 2) An Informal Resolution (upon submission of a Formal Complaint); and/or
- 3) A Formal Grievance Process including an investigation and a hearing (upon submission of a Formal Complaint).

The University uses the Formal Grievance Process to determine whether or not the Policy has been violated. If so, the University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, and/or their effects.

Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator and/or Deputy Title IX Coordinator(s) engages in an initial assessment, which is typically one to five (1-5) business days in duration. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.
 - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because an individualized risk assessment indicates a compelling threat to health and/or safety.
- If a Formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an Informal Resolution option, or a formal investigation and grievance process.
 - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses their request(s), and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
 - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution, and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
 - If a Formal Grievance Process is preferred by the Complainant, the Title IX Coordinator determines if the misconduct alleged falls within the scope of the 2020 Title IX regulations:
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate issue, based on the nature of the complaint.
 - If the alleged misconduct does not fall within the scope of the 2020 Title IX regulations, the Title IX Coordinator determines that Title IX regulations do not apply and will procedurally “dismiss” that aspect of the complaint under Title IX. The Title IX Coordinator then assesses which University policies may apply and refers the complaint to be processed under the appropriate resolution process. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX, and does not limit the University’s authority to address a complaint with an appropriate process and remedies.

Individualized Risk Assessment

In many cases, the Title IX Coordinator may determine that an Individualized Risk Assessment (IRA) should be conducted by the University's Behavioral Threat Assessment Team as part of the initial assessment. An IRA can aid in critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through Informal Resolution, and what modality may be most successful;
- Whether to communicate with a transfer Recipient about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning/ Trespass order/Persona-non-grata is needed.

Threat assessment is the process of evaluating an individual's level of violence risk and/or the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. An IRA authorized by the Title IX Coordinator should occur in collaboration with the Behavioral Threat Assessment Team.

Dismissal (Mandatory and Discretionary)

The University must dismiss a Formal Complaint (as Title IX) or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute sexual harassment under Title IX as defined in the Equal Opportunity, Harassment, and Nondiscrimination Policy, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the University.

The University may dismiss a Formal Complaint (as Title IX) or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by the University; or

- 3) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Parties.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

Dismissing a complaint under Title IX is solely a procedural requirement, and does not limit the University's authority to address a complaint under "Process A" if it meets one of the other sexual misconduct definitions or jurisdictional categories as described in the Policy. The Title IX Coordinator will provide the Parties with notification of the potential violations that will still be processed under "Process A."

Counterclaims

The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay in the investigation of a counterclaim may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of policy.

Right to an Advisor

The Parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The Parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

The University may permit Parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to

advise, support, and/or consult with them throughout the resolution process. The Parties may choose Advisors from inside or outside of the Wilkes community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the Parties choose an Advisor from the pool available from the University, the Advisor will be trained by the University and be familiar with the University's resolution process.

If the Parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with the University's policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

Advisor's Role in Meetings and Interviews

The Parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney.

Advisors in Hearings/University-Appointed Advisor

Under the U.S. Department of Education's 2020 regulations for Title IX, cross-examination is required during the hearing, but must be conducted by the Parties' Advisors. The Parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any cross-examination.

Pre-Interview Meetings

Advisors may request to meet with the Title IX Coordinator in advance of any pre-hearing interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and the University's policies and procedures.

Advisor Violations of University Policy

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not and whether they are selected by a party or assigned by the University. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address University officials or investigators in a meeting or interview unless invited to do so (e.g., to ask procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination.

The Parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the Parties and their

Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing will be ended, or other appropriate measures implemented. Subsequently, if the Title IX Coordinator determines the Advisor does not respect the decorum of the University's proceedings, the party will be notified that they must choose a new Advisor or they will be appointed one for future meetings/hearing.

Sharing Information with the Advisor

The University expects that the Parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the Parties participate more meaningfully in the resolution process.

At the request of a party, the University may also provide a consent form that authorizes the University to share such information directly with their Advisor. The Parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before the University is able to share records with an Advisor.

Advisors are expected to maintain the privacy of the records shared with them. The University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

Expectations of an Advisor

The University generally expects an Advisor to adjust their schedule to allow them to attend University meetings when planned, but the University may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The University may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

Expectations of the Parties with Respect to Advisors

The Parties are expected to provide notice to the Title IX Coordinator when they choose an Advisor or otherwise would like to request a University-appointed Advisor. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The Parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor should be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with University policy. Although there is an expectation of privacy around what Investigators share with the Parties during interviews, the Parties have

discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose as part of an Informal Resolution. Wilkes encourages the Parties to discuss any sharing of information with their Advisors before doing so.

Informal Resolution

Informal Resolution can include two different approaches:

- Accepted Responsibility
- Supportive Resolution

To initiate Informal Resolution, a Complainant needs to submit a Formal Complaint, as defined in the Policy. If a Respondent wishes to initiate Informal Resolution, they should contact the Title IX Coordinator to so indicate.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process. The parties may agree as a condition of engaging in Informal Resolution that statements made or evidence shared during the Informal Resolution process will not be considered in the Formal Grievance Process unless all parties consent

Prior to implementing Informal Resolution, the University will provide the Parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University.

The University will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

The Title IX Coordinator, in consultation with other University administrators, may look to the following factors to assess whether Informal Resolution is appropriate:

- Likelihood of potential resolution, taking into account any power dynamics between the Parties;
- The Parties' motivation to participate;
- Civility of the Parties;
- Results of an individualized risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Complaint complexity;
- Emotional investment/capability of the Parties;
- Rationality of the Parties;
- Goals of the Parties

The Title IX Coordinator maintains records of any Informal Resolution that is reached, and failure to abide by a resolution agreement may result in appropriate responsive/disciplinary actions.

Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during

the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria listed in the section above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the University are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of the University's policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the Parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

Supportive Resolution

When requested or agreed upon by the Complainant, the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

Formal Grievance Process

Grievance Process Pool

The Formal Grievance Process relies on a pool of administrators ("the Pool") to carry out the process. Students, parents/guardians of students, employees, prospective students, and prospective employees can find Members of the Pool [here](#).

Pool Member Roles

Members of the Pool are trained annually, and can serve in in the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints;
- To act as an Advisor to the Parties;
- To serve in a facilitation role in Informal Resolution;
- To perform or assist with initial assessment;
- To investigate complaints;
- To serve as a hearing facilitator (process administrator, no decision-making role);
- To serve as a Decision-maker regarding the complaint;
- To serve as an Appeal Decision-maker

In addition to the above-listed roles, the University Judicial Council (UJC) will serve as the Appeal Decision-maker in the Formal Grievance Process. The UJC is also trained annually and consists of the Dean of Students; faculty representatives; and staff representatives. If a member of the UJC is not available to serve

on a given case (due to a demonstrated conflict-of-interest or otherwise), a member from the Grievance Process Pool may fill in.

For cases where the Respondent is an employee, those involved in the sanctioning process, such as the Provost, the Faculty Dismissal and Suspension Committee (faculty) and the appropriate Vice President, Department Chair, etc. (staff), will receive training in respect to the sanction-only process prior to issuing sanctions.

Likewise, the Faculty Appeals Committee, whom serve as the Appeal Decision-maker for faculty Respondents, will also be trained prior to hearing an appeal. If a member of the Faculty Appeals Committee is not available to serve on a given case (due to a demonstrated conflict-of-interest or otherwise), a member from the Grievance Process Pool or UJC may fill in.

The Title IX Coordinator, in consultation with other appropriate administrators, chooses who serves in the Pool. While members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, they may also be designated in permanent roles dependent on particular skills, aptitudes, training, or job positions.

The Title IX Coordinator may also assign any of the above-listed roles to be conducted by a trained outside (third-party) consultant.

Pool Member Training

The Pool members receive annual training (jointly or based on their respective roles), which includes, but is not limited to:

- The scope of the University's Equal Opportunity, Harassment, and Nondiscrimination Policy and Procedures;
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability;
- Implicit bias;
- Disparate treatment;
- Reporting, confidentiality, and privacy requirements;
- Applicable laws, regulations, and federal regulatory guidance;
- How to implement appropriate and situation-specific remedies;
- How to investigate in a thorough, reliable, and impartial manner;
- How to uphold fairness, equity, and due process;
- How to weigh evidence;
- How to conduct questioning;
- How to assess credibility;
- Impartiality and objectivity;
- How to render findings and generate clear, concise, evidence-based rationales;
- The definitions of all offenses;
- How to apply definitions used by the University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy;
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes;

- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- How to serve in the role of Advisor for either party;
- Any technology to be used at a live hearing;
- Issues of relevance of questions and evidence;
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence;
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations

All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted [here](#).

Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who will be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations;
- The identity of the involved parties (if known);
- The precise misconduct being alleged;
- The date and location of the alleged incident(s) (if known);
- The specific policies implicated;
- A description of the applicable procedures;
- A statement of the potential sanctions/responsive actions that could result;
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination;
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period;
- A statement about the University’s policy on retaliation;
- Information about the privacy of the process;
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor;
- Detail on how the party may request disability accommodations during the interview process;
- A link to the University’s VAWA Brochure;
- The name(s) of the Investigator(s), along with a process to identify to the Title IX Coordinator, in advance of the interview process, any conflict of interest that the Investigator(s) may have; and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations and/or charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person,

mailed to the local or permanent address(es) of the Parties as indicated in official University records, or emailed to the Parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. Generally, University-issued email is the primary means of communication, however alternative methods of communication may also be utilized if requested.

Resolution Timeline

The University will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal if any, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the Parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator will notify an Investigator(s) who will initiate the formal investigation. Investigators will be chosen from the Grievance Process Pool or may be a trained outside investigator.

Ensuring Impartiality

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, Investigator(s), and Decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The Parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The University operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof (preponderance of evidence).

Investigation Timeline

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the Parties to update them on the progress and timing of the investigation.

Delays in the Investigation Process and Interactions with Law Enforcement

The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

The University will communicate in writing the anticipated duration of the delay and reason to the Parties, and provide the Parties with status updates if necessary. The University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the University will implement supportive measures as deemed appropriate.

University action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed by the Title IX Coordinator (not necessarily in this order):

- Determine the identity and contact information of the Complainant;
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures;
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated;
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation;
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the Parties;
- Meet with the Complainant to finalize their interview/statement, if necessary;
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
 - Notice should inform the Parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party;
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes of the relevant evidence/testimony from their respective interviews and meetings;

- Make good faith efforts to notify the Parties of any meeting or interview involving the other party, in advance when possible;
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose;
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary;
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions;
- Complete the investigation promptly and without unreasonable deviation from the intended timeline;
- Provide regular status updates to the Parties throughout the investigation;
- Prior to the conclusion of the investigation, provide the Parties with a list of witnesses whose information will be used to render a finding;
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included;
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report;
- Prior to the conclusion of the investigation, provide the Parties a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The Parties may elect to waive the full ten days;
- The Investigator(s) may elect to respond in writing in the investigation report to the Parties' submitted responses and/or to share the responses between the Parties for additional responses;
- The Investigator(s) will incorporate relevant elements of the Parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period;
- The Investigator(s) shares the report with the Title IX Coordinator for their review and feedback;
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The Parties are also provided with a file of any directly related evidence that was not included in the report.

Role and Participation of Witnesses in the Investigation

Witnesses who are employees of the University are strongly encouraged, but not required to cooperate with and participate in the University's investigation and resolution process.

Student witnesses are also strongly encouraged, but not required to cooperate with and participate in the University's investigation and resolution process.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, telephone, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness, efficiency, or other reasons dictate a need for remote interviewing. The University will take

appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.

Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; or 2) questions and evidence about the Complainant's sexual predisposition; or 3) questions and evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the Parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be held less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the Parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker or Decision-makers from the Pool depending on whether the Respondent is an employee or a student, and provide a copy of the investigation report. Allegations involving student-employees will be directed to the appropriate Decision-maker depending on the context of the alleged misconduct.

Hearing Decision-maker Composition

The University will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the resolution process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as

Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role.

Evidentiary Considerations in the Hearing

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant's sexual predisposition; or 3) questions or evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

The Parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker(s) render(s) a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the Parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result;
- The time, date, and location of the hearing;
- Description of any technology that will be used to facilitate the hearing;
- Information about the option for the live hearing to occur with the Parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing;
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker(s) on the basis of demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing;

- Information on how the hearing will be recorded and on access to the recording for the Parties after the hearing;
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Title IX Coordinator or Chair may reschedule the hearing;
- Notification that the Parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The Party must notify the Title IX Coordinator if they do not have an Advisor, and the University will appoint one. Each party must have an Advisor present. There are no exceptions;
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already;
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker(s) will review during any sanction determination;
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least five (5) business days prior to the hearing;

Hearings for possible violations that occur near or after the end of an academic semester and are unable to be resolved prior to the end of the semester will typically be held immediately after the end of the semester or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 60-90 business day goal for resolution.

Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the Party should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing.

The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

Pre-Hearing Preparation

After any necessary consultation with the Parties, the Title IX Coordinator (or the Chair) will provide a list of the names of the Decision-maker(s), the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the Parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the Parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and/or instruct that the investigation needs to be re-opened to consider that evidence.

All objections to any Decision-maker(s) must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than five (5) business days

prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the Parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the Parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Title IX Coordinator or Chair at a pre-hearing meeting or at the hearing and will be exchanged between each party by the Title IX Coordinator or the Chair.

Pre-Hearing Meetings

The Chair may convene a pre-hearing meeting(s) with the Parties and their Advisors to invite them to submit the questions or topics they wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a pre-hearing ruling by the Chair based on any new information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the Parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator for procedural matters, or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded. The pre-hearing(s) meetings may be conducted as separate meetings with each party/advisor, with all parties/advisors present at the same time, remotely, or as a paper-only exchange. The Chair will work with the Parties to establish the format. The Chair will also work with the Title IX Coordinator to assure Policy/Procedure is followed.

Hearing Procedures

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of sexual harassment or other sexual misconduct and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual harassment or other sexual misconduct, even though those collateral allegations may not specifically fall within the Policy on Equal Opportunity, Harassment, and Nondiscrimination.

Participants at the hearing will include the Chair, any additional panelists, the Investigator(s) who conducted the investigation, the Parties, Advisors to the Parties, any called witnesses, the Title IX Coordinator and/or Deputy Title IX Coordinator (generally also serving as Hearing Facilitator), and anyone providing authorized accommodations, interpretation, and/or assistive services.

The Chair and/or Title IX Coordinator will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the Parties, and the witnesses will then be excused.

Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

The Order of the Hearing – Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The Chair then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the Parties, and other administrative elements of the hearing process are managed by the Title IX Coordinator and/or Deputy Title IX Coordinator. Accordingly, the Title IX Coordinator or Deputy Title IX Coordinator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

Investigator Presents the Final Investigation Report

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the Parties (through their Advisors). The Investigator(s) will then either remain present during the entire hearing process or thereafter be available as needed (in person or by previously agreed upon technology). The investigator will not be present during deliberations.

Neither the Parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and the Parties will refrain from discussion of or questions for investigators about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

Testimony and Questioning

Once the Investigator(s) present(s) the report and are questioned, the Parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair.

The Parties/witnesses will submit to questioning by the Decision-maker(s) and then by the Parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, directly, and in real-time. The proceeding will pause to allow the Chair to consider the question, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the Party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance, subject to any appeal. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the Parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker(s) at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

Refusal to Submit to Cross-Examination

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then it will be at the discretion of the Decision-maker(s) to weigh the probative value of previous statements by that party or witness.

The Decision-maker(s) may not draw any inference solely from a party’s or witness’s absence from the hearing or refusal to answer cross-examination or other questions.

If collateral charges of policy violations other than sexual harassment/sexual misconduct are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party’s Advisor of choice refuses to comply with the University’s established rules of decorum for the hearing, the University may require the party to use a different Advisor. If a University-provided Advisor refuses to comply with the rules of decorum, the University may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

Recording Hearings

Hearings (but not deliberations) are recorded by the University for purposes of review in the event of an appeal. The Parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the Parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording or review a transcript of the recording in a controlled environment

determined by the Title IX Coordinator, upon request. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used to make a finding. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

The Chair will then prepare a Written Deliberation Statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, and credibility assessments.

This Statement must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the Parties.

Sanctioning

Students:

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) will immediately engage in a determination of sanctions. The Decision-maker(s) may consider any previously submitted party impact statements in determining appropriate sanction(s).

At the hearing, the Chair will give each of the Parties an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The Decision-maker(s) will review the statements and any pertinent conduct history provided by the Title IX Coordinator and will determine the appropriate sanction(s). The Decision-maker(s) may consult with the Title IX Coordinator and/or Deputy Title IX Coordinator to gather general historical knowledge regarding a range of sanctions issued for the particular policy violation, in order to assure consistency. The sanctions and accompanying rationale, will be included in the Written Deliberation Statement as described above.

Employees:

- (a) Upon receipt of the Written Deliberation Statement from the Title IX Coordinator, the Provost (in consultation with the Dismissal & Suspension Committee) (faculty) or appropriate Vice President (in consultation with Supervisors/Department Chairs, etc.) (staff), shall work with the Hearing Chair to propose an appropriate sanction in response to the conclusions described in the Written Deliberation Statement. In carrying out their respective roles, these administrators shall have access to and may consult the hearing recording and consult with the hearing Decision-maker(s) should they seek further clarification on the findings, including credibility determinations. They will also consider previously submitted impact statements (submitted and reviewed by each party prior to or at the hearing) and any pertinent conduct history provided by the Title IX Coordinator.

Those involved in the sanctioning process may consult with the Title IX Coordinator and/or Deputy Title IX Coordinator to gather general historical knowledge regarding a range of sanctions issued for the particular policy violation, in order to assure consistency.

(b) Within five (5) business days following receipt of the Written Deliberation Statement from the Title IX Coordinator, the Provost (or designee), Vice President (or designee), or Hearing Chair shall deliver to the Title IX Coordinator, a written decision on sanctions which shall include both a determination on sanctions to be imposed and the rationale used in making such determination.

(c) The sanction imposed shall be made part of the Notice of Outcome issued as described below.

Notice of Outcome

Using the Deliberation Statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome letter. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the Parties and their Advisors within 7 - 10 business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the Parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official University records, or emailed to the Parties' University-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policy(ies) alleged to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notifications to the Parties, interviews with the Parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and whether remedies will be provided to the Complainant to ensure access to the University's educational or employment program or activity.

The Notice of Outcome will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s);
- The Respondent's disciplinary history;
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation;
- The need for sanctions/responsive actions to prevent the future recurrence of

discrimination, harassment, and/or retaliation;

- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community;
- The impact on the Parties;
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

Student Sanctions

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

- **Official Reprimand:** In instances of less serious deviation from the University norms of conduct the student is formally warned regarding the misconduct. The student is also notified that the consequences of such continued behavior could result in more serious disciplinary action.
- **Disciplinary Probation:** This action is a formal admonition on behalf of the University and is intended to clearly document to a student that their behavior has been deemed unacceptable. This action requires that students demonstrate, during a stipulated period of time, they are capable of functioning in such a way so as not to be in conflict with standards of behavior expected of students at Wilkes. Disciplinary probation alerts the students involved, and all concerned, that further conduct may result in curtailment of activities or suspension of residential and academic privileges.
- **Denial of Privileges:** This penalty precludes the student's participation in specified activities (e.g., student offices, student activities, use of University facilities or access to University facilities) for a period of time.
- **Restitution/Penalty Charges:** Charges will be assessed where restitution is due for damage to University or student property or property of an agent outside of the University. The charges assessed will be equal to the value of the property and any incurred labor charges.
- **Residential Suspension and Expulsion:** The first status indicates that a student is on final notice from the University that any further violation of regulations will lead to the student's suspension from University-owned residence halls. Further difficulties will lead to expulsion from the residence halls. Any student who has been suspended/expelled from the residence halls may not enter any University-owned residence halls without the express permission of the Dean of Students' Office.
- **Deferred Suspension:** This action is invoked in severe cases that might generally call for suspension, but consideration of mitigating circumstances warrants the student not be suspended at this time. If this sanction is invoked, it is understood that any further violation of University policy, even of a minor nature, could call for suspension from the University. A student who has been given a deferred suspension from the University may, at the discretion of the Student Affairs Council, be restricted from representing the University in any official capacity.
- **Disciplinary Suspension:** This penalty involves the involuntary separation of the student from the University for a specified period of time. It is invoked when a student, as a result of their actions, has forfeited the privilege of attending the University. Suspension from the University may range for a period of time up to two (2) years, including summer sessions and inter-sessions. Students who have been suspended may be required to meet certain conditions during the period of their suspension and

must submit a letter to the Dean of Students' Office requesting readmission to the University. Students who have been suspended may not attend classes, be on University property, or participate in University-sponsored functions on or off campus during the period of suspension. Any exceptions require the explicit approval of the Dean of Students' Office.

- **Indefinite Suspension:** This sanction suspends the student from the University for a period of more than two (2) years.
- **Disciplinary Dismissal:** This action is one of involuntary separation of the student from the University and is permanent. It is the most severe disciplinary sanction imposed by the University.
- **Withholding Diploma:** The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.
- **Revocation of Degree:** The University reserves the right to revoke a degree awarded from the University for fraud, misrepresentation or other violation of University policies, procedures or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Other Actions:** In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

Employee Sanctions

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- Employee termination from the University
- Unpaid suspension
- Restrictions from all or portions of campus
- Change in working facility
- Mandated education
- Written reprimand in personnel file
- Removal from classroom teaching
- Tenure revocation
- Withhold salary increase (from one to several years)
- Removal of endowed chair
- Removal of emeritus status
- Removal of graduate school status
- Termination of research project funding
- Removal from administrative position
- Verbal reprimand
- Required participation in counseling or training
- Demotion
- Change to reporting structure
- Reinstatement of an employment probationary period
- Other Actions: In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

Withdrawal or Resignation While Charges Pending

Students:

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent withdraw from the University, the University will typically proceed with the Formal Grievance Process.

When determining to proceed with the Formal Grievance Process after a Respondent withdraws from the University, the Title IX Coordinator will base the decision on reasons that may include whether a Respondent poses an ongoing risk to the University's community, whether a determination regarding responsibility provides a benefit to the Complainant even where the University no longer has control over the Respondent and would be unable to issue disciplinary sanctions, or for other reasons.

The student who withdraws or leaves while the process is pending may be barred from University property and/or events during this time. Moreover, if the student is found to have violated this Policy, the student is not permitted to return to the University unless and until all sanctions have been satisfied.

The University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Employees:

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends with dismissal, as the University no longer has disciplinary jurisdiction over the resigned employee.

However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the University, and the records retained by the Title IX Coordinator will reflect that status.

Appeals

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome.

A three-member panel chosen from the University Judicial Council will be designated to hear the appeal. This generally consists of the Dean of Students, one faculty representative and one staff representative. However, this is subject to change dependent on the circumstances on a case-by-case basis. For cases involving a faculty Respondent, three members from the Faculty Appeals Committee will be designated to hear the appeal. No appeal panelists will have been involved in the process previously, including in any dismissal appeal that may have been heard earlier in the process. A voting Chair of the Appeal Panel will be designated.

The Request for Appeal will be forwarded to the Appeal Chair or designee for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

Grounds for Appeal

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair, and the Parties will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies), the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies), the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request for appeal with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses, if any, in five (5) business days, which will be circulated for review and comment by all parties. If not approved, the Parties will be notified accordingly, in writing.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds for appeal, and the subsequent responses will be shared with the Appeal Panel, and the Panel/Chair will render a decision in no more than ten (10) business days, barring exigent circumstances. All decisions are by majority vote and apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in

person, mailed to the local or permanent address of the Parties as indicated in official institutional records, or emailed to the Parties' University-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then Emergency Removal Procedures detailed in the Policy for a meeting on the justification for doing so must be permitted within 48- hours of implementation.

Appeal Considerations

- Appeals are not intended to provide for a full re-hearing of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Panel may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where an error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new investigation with new investigators and/or a new hearing with a new Decision-maker(s).
- The results of a remand to a Decision-maker(s) cannot be appealed.
- In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the Parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services;
- Referral to the Employee Assistance Program;

- Education to the individual and/or the community;
- Permanent alteration of housing assignments;
- Permanent alteration of work arrangements for employees;
- Provision of campus safety escorts;
- Climate surveys;
- Policy modification and/or training;
- Provision of transportation accommodations;
- Implementation of long-term contact limitations between the Parties;
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the Parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by the University to the Respondent to ensure no effective denial of educational access.

The University will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the University's ability to provide these services.

Failure to Comply with Sanctions and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Panel).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

Recordkeeping

The University will maintain for a period of at least seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. The University will make these training materials publicly available on the University's website; and
7. Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to the University's education

- program or activity; and
- c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The University will also maintain any and all records in accordance with state and federal laws.

Disabilities Accommodations in the Resolution Process

The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's resolution process.

Anyone needing such accommodations or support should contact the Director of Disability Services (students) or Human Resources (employee), who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

Revision of this Policy and Procedures

This Policy and Procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation and will be reviewed and updated annually by the Title IX Coordinator, in consultation with other University administrators. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and Procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This Policy and Procedures are effective on August 14, 2020.