

University Policy on Prohibited Discrimination, Harassment and Retaliation Other Than Sex

Approved By: President; Endorsed by Board of Trustees

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Responsible Offices:

Provost, Student Affairs, Vice President for Finance and Administration/Treasurer

Related Policies:

- [Non-Discrimination / Equal Employment Opportunity Statement](#)
- [Sexual Discrimination and Misconduct Policy](#)
- [Consensual Relationships](#)

Additional Reference:

- [Resources Contact Information](#)

I. Policy Statement

Under the Washington and Lee University's nondiscrimination statement, students, faculty, and staff have the right to be free from prohibited discrimination, harassment, and retaliation within the University community. Specifically, the University prohibits and this policy addresses discrimination, including harassment, on the basis of race, color, religion, national or ethnic origin, age, disability, veteran's status, and genetic information in its educational programs and activities and with regard to employment. Additionally, the University prohibits retaliation against any individual who brings a good faith complaint under this policy, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing under this policy; or engaged in bystander intervention of misconduct. Such conduct violates not only University policy and expectations of personal integrity and respect for others, but may also violate state and federal law.

Students, faculty, and staff found to have violated this policy will be disciplined appropriately, up to and including termination from employment or dismissal from the University.

The University also prohibits discrimination, harassment and retaliation on the basis of sex and gender, including gender identity, gender expression, and sexual orientation. The policy and procedures for complaints involving sexual harassment, sexual discrimination, sexual assault, stalking, dating and domestic violence, and retaliation are described in the separate Interim Sexual Discrimination and Misconduct Policy (go.wlu.edu/OGC/SexualMisconductPolicy). If some but not all of the conduct alleged in a formal complaint falls under the Interim Sexual Discrimination and Misconduct Policy in addition to this policy, the University may choose to address the entire matter in accordance with the resolution process as set forth in the Interim Sexual Discrimination and Misconduct Policy.

A. Applicability

This policy applies to all members of the Washington and Lee community, including students, faculty, and staff, as well as consultants, volunteers, vendors, and others engaged in business with the University. Visitors to and guests of Washington and Lee University are also subject to this policy's prohibitions.

This policy pertains to acts of prohibited conduct committed by or against students, employees, and third parties when:

- The conduct occurs on the campus or other property owned or controlled by the University;
- The conduct occurs during or in connection with a University education program or activity, including in the course of University-related business, travel or off-campus programs. This may include, but is not limited to, domestic or international academic programs, field trips, spring term coursework, study-abroad programs, internship programs, work-related conferences, etc.;
- The conduct has a continuing adverse effect for a complainant while on campus or other property owned or controlled by the University or in any University employment or education program or activity; or
- The conduct is committed by a student and occurs in the City of Lexington, the City of Buena Vista, or the County of Rockbridge.

Where the date of the reported prohibited conduct precedes the effective date of this policy, the definitions of prohibited conduct in existence at the time of the alleged incident(s) will be used. However, to the extent permitted by law, the procedures set forth in this policy will be used to investigate and resolve all formal complaints made

on or after the effective date of this policy, regardless of when the incident(s) occurred.

II. Prohibited Conduct

W&L prohibits and will not tolerate discrimination or harassment based on a protected category (race, color, religion, national or ethnic origin, age, disability, veteran's status, and genetic information) or retaliation in any form. Such violations are subject to any combination of sanctions, including suspension, dismissal, or termination of employment.

A. Prohibited Discrimination

Unequal treatment based on a listed protected category that is sufficiently serious to unreasonably interfere with or limit the individual's opportunity to participate in or benefit from a University program or activity or that otherwise adversely affects a term or condition of an individual's education or living environment.

B. Prohibited Harassment

Unwelcome conduct on the basis of one or more of the listed protected categories may constitute prohibited harassment, depending on the circumstances of each case. Prohibited harassment can take many forms, such as words, visual images, gestures, or other verbal or physical conduct, whether in person, by telephone, or other electronic means.

To constitute harassment in violation of this policy there must be a finding that the conduct was: (1) based on one or more of the protected categories mentioned above; (2) unwelcome and offensive; and (3) severe, persistent, or pervasive that it unreasonably interferes with an individual's work or academic performance, or creates an intimidating or hostile academic or work environment under both an objective (a reasonable person's view) and subjective (the complainant's view) standard.

Harassment may also occur if submission to conduct described in (1) and (2) above is an expressed or implied condition of an individual's employment, evaluation of academic work, or any aspect of a University program or activity or if refusal to submit to such conduct resulted in a tangible academic or employment detriment.

Conduct is unwelcome if the individual did not request or invite it and regarded the conduct as undesirable or offensive. Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.

A single, isolated incident of unwelcome conduct alone may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical. The determination of whether an environment is hostile must be based on all the circumstances. These circumstances could include, but are not limited to:

- The degree to which the conduct affected one or more person's education or employment;
- The type, frequency, and duration of the conduct;
- The nature and severity of the conduct;
- The relationship between the respondent and the complainant;
- Whether the conduct was physically threatening;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct; and/or
- Whether the conduct deserves the protections of academic freedom.

C. Retaliation

Retaliation means to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right granted under or exercised pursuant to this policy, or because the individual has made a report or complaint; assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing under this policy; or engaged in bystander intervention of misconduct.

The good faith reporting of an alleged violation of this policy does not constitute retaliation. Additionally, reporting an individual for making a materially false statement in bad faith in the course of an investigation, proceeding, or hearing does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith. While disclosing information as permitted under Section VI is not retaliation, it may constitute retaliation if intimidating, threatening, coercing, or discriminating. An individual may be found responsible for retaliation even when there is no finding of responsibility for the original alleged policy violation for which the individual has retaliated.

For employees, discipline for retaliation may be handled by the Executive Director of Human Resources, the Provost's office, or a department head, or may be addressed by the Harassment and Sexual Misconduct Board ("HSMB") or Investigation Review Officer ("IRO") panel. For students, the Vice President for Student Affairs and Dean of

Students has the discretion to address retaliation by taking administrative actions, disciplinary or otherwise, or referring the matter for a formal conduct charge. Notwithstanding the foregoing, and regardless of the manner in which any alleged retaliation is addressed, before any discipline is imposed, the person accused of retaliation will receive notice and an opportunity to be heard, as appropriate under the circumstances.

III. Definitions

A. Advisor(s)

Throughout the applicable resolution process, the complainant and respondent have the right to Advisor(s) as follows:

1. In the resolution process for complaints against students, the complainant and respondent will each be provided with one (1) or two (2) Hearing Advisors or one (1) Discrimination Policy Advisor (DPA). The parties may choose whether they wish to use a DPA or Hearing Advisor(s), but a party cannot use both a DPA and Hearing Advisor(s).
2. In the resolution process for complaints against employees or other nonstudents, both parties have the right to a Discrimination Policy Advisor (DPA).

The role of Advisors is to advise the complainant or respondent of applicable procedures. Advisors are also available to offer support and to provide information on additional resources.

In all cases, Advisors may accompany the party they are advising to any meeting, interview, or hearing in connection with a formal complaint. While Advisors may accompany the complainant and respondent at meetings, interviews, and hearings, they may not present evidence or otherwise participate. Parties may request a brief recess to consult with their Advisor(s) during meetings, interviews, and hearings, which will be granted at the discretion of the investigator(s), Chair of the HSMB or Appeal Panel, Co-Chair, IROs, or individual(s) facilitating informal resolution, as applicable.

Advisors must follow the University's policies, procedures, and practices. Any Advisor who does not follow the University's policies, procedures, and/or practices, including the rules relating to professional conduct and the role of Advisor(s), will be warned once. If the Advisor continues to violate the University's policies, procedures, and/or practices, such Advisor will be asked to leave the meeting, interview, or hearing at the discretion of the investigator(s), Chair of the HSMB or Appeal Panel, Co-Chair, IROs, or individuals facilitating informal resolution, as applicable. When an Advisor is

removed from a meeting, interview, or hearing, it will continue without the Advisor's presence.

The University expects all Advisors to adjust their schedule to allow them to attend meetings, interviews, and hearings held in connection with a formal complaint when scheduled. While the University will consider rescheduling to reasonably accommodate an Advisor's unavoidable conflict, whether to grant such a request is in the sole discretion of the investigator(s), Chair of the HSMB or Appeal Panel, Co-Chair, IROs, or individual(s) facilitating informal resolution, as applicable.

B. Appeal Panel

The Appeal Panel is the body that receives and adjudicates appeals of decisions of the Harassment and Sexual Misconduct Board or an Investigation Review Panel. For complaints against students, the Appeal Panel is made up of three (3) members of the HSMB selected by the Chair of the Appeal Panel who did not serve on the original panel, or, alternatively, the University may choose to retain and use an external consultant/vendor. For complaints against employees or other nonstudents, an Appeal Panel is made up of three (3) IROs who were not involved in the original investigation or panel and who are appointed by a Co-Chair who was not involved in the original review or sanctioning process, or, alternatively, the University may choose to retain and use an external consultant/vendor. Each member of the Appeal Panel must be impartial and free of any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The Chair of the Appeal Panel or Co-Chair (as applicable) has discretion to address any conflicts that may arise with members constituting the panel. Appeal Panel members who have reason to believe they cannot be impartial, free of any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, or make an objective determination must recuse themselves from the process.

C. Chair of the Appeal Panel

For complaints against students, the Chair of the Appeal Panel will be a Chair of the HSMB who was not involved in the original hearing, or, alternatively, the University may choose to retain and use an external consultant/vendor. The Chair of the Appeal Panel will determine the proper composition of the panel, oversee and organize the appeal process, and enforce the rules of professional conduct as outlined in Section XVII.A, but does not have a vote in the appeal process. The Chair of the Appeal Panel must be impartial and free of any conflict of interest or bias for or against an

individual complainant or respondent. The Chair of the Appeal Panel shall exercise reasonable discretion in dealing with all matters not expressly covered under this policy relating to the appeal process and shall have the authority to make the final determination as to all procedural questions or issues that may arise relating to the appeal process.

D. Chair of the HSMB

For complaints against students, the Chair of the HSMB is an individual designated to serve as Chair of the HSMB hearing panel, or, alternatively, the University may choose to retain and use an external consultant/vendor. The Chair of the HSMB appoints the HSMB panel members, communicates with the parties at various stages in a resolution process, makes evidentiary rulings and other decisions as set forth in this policy, organizes and runs the hearing process, and enforces the rules of professional conduct as outlined in Section XVII.A, but does not vote on responsibility or sanction. The Chair of the HSMB shall exercise reasonable discretion in dealing with all matters not expressly covered under this policy and shall have the authority to make the final determination as to all procedural questions or issues that may arise.

E. Co-Chairs

For complaints against employees or other nonstudents, the Co-Chair of the IROs will be the Treasurer/Vice-President for Finance and Administration, the Provost, or any other individual designated to serve as Co-Chair, or, alternatively, the University may choose to retain and use an external consultant/vendor. The Co-Chairs, who are specially trained to carry out these procedures, receive formal complaints, appoint the investigator(s), Investigation and Review Panel, and the Appeal Panel (as needed), communicate with the parties at various stages in a resolution process, and determine the sanction when a policy violation is found. The Co-Chairs serve as advisors to the IROs on procedural matters.

F. Complainant

The term complainant refers to the individual who is alleged to be the victim of conduct that could constitute prohibited conduct, regardless of whether that individual makes a report or seeks formal disciplinary action.

G. Discrimination Policy Advisors

Discrimination Policy Advisors (DPAs) are University faculty or staff members who have been trained to provide support and advice to complainants and respondents. Discrimination Policy Advisors must follow the rules applicable to Advisors set forth in Section III.A above.

H. Formal Complaint

A formal complaint is a written or electronic document filed by a complainant or signed by the Title IX or Assistant Title IX Coordinator alleging prohibited conduct against a respondent and requesting that the University investigate the allegations.

I. Harassment and Sexual Misconduct Board

The Harassment and Sexual Misconduct Board (HSMB) is the body that determines responsibility and, if warranted, administers sanctions against any respondent for complaints made against students.

The HSMB is made up of individuals that may serve in the role of Chair of a HSMB hearing panel and/or Appeal Panel and/or as members of a HSMB hearing panel or Appeal Panel, or, alternatively, the University may choose to retain and use an external consultant/vendor.

The Chair of the HSMB and each member of the HSMB panel for a particular matter must be impartial and free of any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. HSMB members who have reason to believe they cannot be impartial, free of any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, or make an objective determination must recuse themselves from the process.

J. Hearing Advisor(s)

Hearing Advisors are law and undergraduate students who have been trained by the University to provide support and advice to complainants and respondents. Hearing Advisors must follow the rules applicable to Advisors set forth in Section III.A above.

K. Investigation and Review Officers

Investigation and Review Officers (IROs) are a group of individuals who investigate and review complaints against employees and other non-students. When a formal

complaint is filed against a member of the faculty, staff, or other non-student under this policy, the relevant Co-Chair selects the investigator(s), an Investigation and Review Panel ("IRP"), and (if needed) an Appeal Panel from the pool of the available IROs, or, alternatively, the University may choose to retain and use an external consultant/vendor. The IROs consist of the following individuals or any other individual(s) appointed to serve by the appropriate Co-Chair:

- Vice President for Student Affairs and Dean of Students or designee
- Associate Provost
- Dean of the College
- Dean of the Williams School
- Dean of the School of Law
- Associate Deans of the College
- Associate Dean of the Williams School
- Professor of Law and Associate Dean of the Law School
- Assistant Dean, Law Student Affairs
- Assistant Dean of Office of Career Strategy (Law)
- Executive Director of Human Resources (Assistant Title IX Coordinator for Employment) or designee
- Chief Technology Officer
- Director of Athletics
- Executive Director of University Facilities
- Vice President for University Advancement or designee
- Vice President for Admissions and Financial Aid or designee
- External consultant/vendor

L. Investigation and Review Panel

The Investigation and Review Panel (IRP) is the body that determines responsibility and, if warranted, recommends sanctions and/or discipline against a respondent for complaints against employees and other nonstudents. The IRP is made up of three (3) IROs selected by the Co-Chair, or, alternatively, the University may choose to retain and use an external consultant/vendor.

M. Medical or Counseling Records

The term medical or counseling records means records of an individual that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a professional's or paraprofessional's

capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to that individual.

N. Notice of Allegations

Notice of allegations refers to the official notice of the allegations provided to the parties upon the receipt of a formal complaint. This notice will provide sufficient details known at the time and be provided with sufficient time to prepare a response before any initial interview.

O. Resolution Process

The term resolution process refers to the process that governs the investigation, hearing or other adjudication, and appeal (if applicable) of a formal complaint. This policy includes three different resolution processes: (1) informal resolution; (2) the resolution process for complaints against students; and (3) the resolution process for complaints against employees and other nonstudents.

P. Respondent

The term respondent refers to the individual(s) or group who has/have been accused of conduct that could constitute prohibited conduct under this policy.

Q. Student

For purposes of this policy, an individual is considered to be a student from the time that individual enrolls at the University and continues until the student withdraws or graduates, including academic term breaks and periods between terms and semesters.

R. Title IX Coordinator

The University's Title IX Coordinator is Lauren E. Kozak, and the Executive Director of Human Resources serves as the Assistant Title IX Coordinator. The Title IX and Assistant Title IX Coordinators receive reports of prohibited conduct and oversees the University's review, investigation, and resolution of those reports to ensure the University's compliance with Title IX and other applicable laws, and the effective implementation of this policy.

The Title IX and Assistant Title IX Coordinators are:

- Responsible for the oversight of the resolution of all reports under this policy involving students, staff, and faculty as well as volunteers and third parties;
- Available to advise any individual, including a complainant, a respondent, or a third party, about the resolution options available at the University;
- Available to provide assistance to any University employee regarding how to respond appropriately to a report;
- Responsible for monitoring compliance with all procedural requirements outlined in this policy;
- Responsible for conducting or overseeing investigations of formal complaints;
- Responsible for the implementation of supportive measures upon a report of misconduct and any remedies imposed as a result.

IV. Notice of Non-Discrimination and Statement of Compliance with Relevant Laws

In compliance with Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and all other applicable non-discrimination laws, Washington and Lee University does not discriminate on the basis of race, color, religion, national or ethnic origin, sex, gender identity, gender expression, sexual orientation, age, disability, veteran's status, or genetic information in its educational programs and activities, admissions, and with regard to employment. Inquiries may be directed to Lauren E. Kozak, Title IX Coordinator, Baker Hall 221, [\(540\) 458-4055](tel:5404584055), kozakl@wlu.edu, who is designated by the University to coordinate compliance efforts and carry out its responsibilities under Title IX, as well as those under Section 504 and other applicable non-discrimination laws.

All University proceedings are to be conducted in compliance with the requirements of Title IX, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act); the Family Educational Rights and Privacy Act (FERPA); and all other applicable federal and state laws and regulations.

In addition to contacting the resources specified in this policy, any person with concerns concerning the University's response to their complaint may contact the following:

U.S. Department of Education

Washington DC (Metro)

Office for Civil Rights

U.S. Department of Education

400 Maryland Avenue, SW

Washington, D.C. 20202-1475

Telephone: 202-453-6020

FAX: 202-453-6021; TDD: 800-877-8339

Email: OCR.DC@ed.gov

V. Resources

The first priority for any individual after experiencing an incident of prohibited conduct should be personal safety and wellbeing. The University encourages all individuals who have experienced prohibited conduct to seek assistance by calling 911, contacting W&L Public Safety, contacting local law enforcement, and/or visiting a medical facility immediately after an incident when such assistance is desired or necessary under the circumstances.

All individuals are encouraged to make a prompt report to law enforcement and/or to seek immediate medical treatment in response to an incident when such assistance is desired or necessary under the circumstances in order to address immediate safety concerns and to allow for the preservation of evidence and an immediate investigative response. The University will assist in these reporting options by arranging for or providing transportation to the hospital, coordinating with local law enforcement (including assisting with filing a police report and obtaining a protective order), and informing a complainant about the University's resources and complaint processes.

The University recognizes that deciding whether to make a report and choosing how to proceed can be difficult decisions. The University encourages any individual who has questions or concerns to seek the support of campus and community resources, including the confidential and nonconfidential resources listed below. These professionals can provide information about available resources and procedural options and other assistance to either party in the event that a report and/or disciplinary proceedings are pursued. Individuals are encouraged to use available resources, regardless of when or where the incident occurred.

Complainants are strongly encouraged to take immediate steps to preserve all evidence that might support a future report to the University, a protective order, or an investigation by law enforcement.

A. Confidential Resources

Confidential resources do not involve notifying any other individual at the University of the incident unless the complainant requests such action. These resources keep information confidential, which means that the information cannot be revealed to any other person without express permission of the disclosing individual. Confidential

resources include medical providers, mental health care providers, and ordained clergy, all of whom have privileged confidentiality recognized by law. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others, the conduct involves suspected abuse of a minor under the age of 18, or as otherwise authorized by state and federal law.

Community members wishing to seek confidential assistance may speak with counselors in the Counseling Center (for students), health service providers in the Student Health Center (for students), local health providers, counseling resources available to employees through the Employee Assistance Program, or members of the clergy, all of whom will maintain confidentiality.

It is important to understand that any University employee who is not designated as a confidential resource cannot guarantee the confidentiality of a report or information concerning an alleged violation of this policy. More information about how to report to campus authorities can be found in Section VII.B.

1. Medical Care

- W&L Student Health Center Phone: 540-458-8401 Location: Lower Level of Davis Hall
- Carilion Rockbridge Community Hospital: Phone: 540-458-3300 Location: 1 Health Cir. Lexington, VA 24450
- Augusta Health: Phone: (800) 932-0262 Location: 78 Medical Center Dr. Fishersville, VA 22939

2. Counseling/Professional Support Resources

- W&L Student Counseling Center: Phone: (540) 458-8590 Location: Early Fielding Building
- Employee Assistance Program (EAP): (800) 992-1931

B. Nonconfidential Resources

Nonconfidential resources can provide support, information about University or other resolution options, and referrals to resources. These resources include Public Safety, local law enforcement, the Title IX office, the Dean of Student's Office, and Human Resources.

- 911
- Lexington Police Department: (540) 462-3705
- Rockbridge County Sheriff's Office: (540) 463-7328

- W&L Public Safety: _(540) 458-8999
- Dean of Students Office: _(540) 458-8754
- Dean on Call 24/7 by calling Campus Public Safety: _(540) 458-8999
- Title IX Coordinator: _(540) 458-4055
- Executive Director of Human Resources: _(540) 458-8250

University nonconfidential resources will maintain the privacy of the information shared.

VI. Privacy and Confidentiality

The University is committed to protecting the privacy of all individuals involved in a report of prohibited conduct. University officials will maintain the privacy of the information shared. Information will be shared only with a limited circle of individuals: those University employees who have a legitimate need to know in order to assist in the active review, investigation, or resolution of the report pursuant to the Family Education Rights and Privacy Act (FERPA) and applicable federal and state laws. After resolution of a matter, the University may also notify appropriate University employees, as necessary to implement the outcome, sanctions, and/or remedies.

No information shall be released from proceedings under this policy by the University, including the identity of any individual who has made a report, any complainant, any respondent, and any witness, except as required or permitted by law or required to carry out the provisions of this policy.

Pursuant to and as required by the Clery Act, if a report of misconduct indicates a serious and continuing threat to the campus community, the University will issue a timely notification to the community to protect its health or safety. Additionally, anonymous statistical information of certain reports must be shared with Public Safety. Annual Clery reporting to the U.S. Department of Education is required of educational institutions for certain offenses that have been reported at campus locations or certain off-campus locations controlled by the institution. The information contained in the Clery report tracks the number of Clery-reportable offenses occurring at such locations and does not include the names or any other identifying information about the persons involved in the incident.

The University may also share non-personally identifying information about reports received in aggregate form, including data about outcomes and sanctions. For formal complaints, at the end of each term, a public notice will be posted that includes the nature of the conduct and each charge for which a respondent was found "Responsible" or "Not Responsible." If there is a finding of responsibility against a student, the public notice will include the sanction imposed for the charge. The Public Notice will not include names or any other personally identifiable information.

To protect the interests of all involved, the following privacy and confidentiality restrictions apply in a resolution process:

- While a resolution process is still pending:
 - Parties may discuss the allegations with others to the extent necessary to gather and present relevant evidence or to obtain support.
 - With the exception of sharing documents with their Advisor(s), parties may not share the information and documents the party received access to as part of the resolution process with third parties, disclose the information and/or documents publicly, or use the documents for purposes not explicitly authorized by the University or by applicable law.
- Advisors are expected to maintain the privacy and confidentiality of any information and/or documents shared with them and may not share any such information and/or documents with third parties, disclose any such information or documents publicly, or use any such information or documents for purposes not explicitly authorized by the University or by the applicable law. 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 and confidentiality expectations.
- After the University's resolution process has concluded, complainants, respondents, witnesses, and Advisors are prohibited from disclosing, describing, or publishing any and all documents the University provided during the resolution process (including but not limited to documents provided during or as a result of the investigation, hearing, and appeal processes), unless the disclosure is required or expressly permitted by law. While this provision prohibits dissemination of the University's investigation, hearing, and appeal materials and information an individual learns from these materials, it does not prohibit the sharing of information about which individuals have independent knowledge as long as they do not engage in retaliation as defined by this policy or violate any other University policies. The parties are also not prohibited from sharing the results of a case, including any violation found to have been committed, and any sanction imposed.

The University may notify a student's parents or guardians of outcomes under this policy only to the extent permitted by law and consistent with University policies, procedures, and practices.

VII. Reporting

A. Reporting to Law Enforcement

The University encourages complainants to pursue criminal action for incidents of prohibited conduct that may also be crimes under state criminal statutes. Complainants have the right to notify or decline to notify law enforcement authorities. The University will assist a complainant, at the complainant's request, in contacting local law enforcement; filing a police report; or requesting a protective order. The University will cooperate with law enforcement agencies if a complainant decides to pursue the criminal process. Complainants have the right to participate or decline to participate in any investigation to the extent permitted under state or federal law.

Local law enforcement information:

- Lexington Police Department: (540) 462-3705
- Rockbridge County Sheriff's Office: (540) 463-7328
- Virginia State Police: (804) 674-2000

The University's policy, definitions, and burden of proof may differ from Virginia criminal law. A complainant may seek resolution through the University's resolution processes, may pursue criminal action, may choose one but not the other, or may choose both. Neither law enforcement's determination whether or not to prosecute a respondent nor the outcome of any criminal prosecution determines whether prohibited conduct has occurred under this policy. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus.

B. University Reporting Resources

Making a report to the University means notifying the Title IX Coordinator or another University employee with the authority to institute corrective measures regarding complaints of prohibited conduct in person, by telephone, in writing, by email, or through an online report. A report may be accompanied by a request:

- for supportive measures or informal resolution,
- to file a formal complaint to initiate a formal resolution process; or
- for no further action.

At the time a report is made, a complainant does not have to decide how to proceed. Deciding how to proceed can be a process that unfolds over time.

All W&L community members are encouraged to report all incidents of prohibited conduct directly to the Title IX Coordinator or Assistant Title IX Coordinator for Employment, or, if after hours, to Public Safety.

- **Lauren E. Kozak, Title IX Coordinator**
Baker Hall 221
Phone: 540.458.4055
Email: kozakl@wlu.edu
Online Report: <http://go.wlu.edu/harassmentreport>
- **Mary E. Main, Assistant Title IX Coordinator**
Office of Human Resources
Two South Main 109
Phone: 540.458.8920
Email: mmain@wlu.edu
- **Department of Public Safety**
Public Safety Dispatch on E. Denny Circle
Phone: 540.458.8999
Available 24 hours a day/7 days a week/365 days a year

The University recognizes that a student or employee may choose to disclose an allegation of prohibited conduct to any employee of the University. For example, a student may choose to confide in an associate dean, a resident adviser, a faculty member, a director, or a coach. Similarly, an employee may choose to confide in a supervisor or a colleague. No W&L employee may promise confidentiality (except certain employees in Student Health and Counseling), and all W&L employees are encouraged to share such information with the Title IX Coordinator or Assistant Title IX Coordinator to ensure consistent application of the policy to all individuals.

C. Anonymous Reporting

Any individual may make an anonymous report concerning incidents of prohibited conduct. An individual may report the incident without disclosing their name, identifying the respondent, or requesting any action. Depending on the extent of information available about the incident or the individuals involved, however, the University's ability to respond to an anonymous report may be limited. The Anonymous Discrimination Reporting Form can be found at:
<http://go.wlu.edu/harassmentreport>

The Title IX Coordinator will receive the anonymous report and will determine how to proceed, as appropriate and in compliance with all federal and state legal obligations.

D. Steps upon Receipt of Report

Upon receipt of a report of prohibited conduct, the Title IX Coordinator or Assistant Title IX Coordinator will promptly contact the complainant, if known, to discuss resolution options, including the availability of supportive measures (Section VIII) with or without the filing of a formal complaint and the option and the process to file a formal complaint to begin a resolution process.

After speaking with the complainant, if the complainant has expressed a desire to proceed with a formal complaint, the University may begin the formal complaint process. If the complainant has requested not to proceed with a formal complaint, the Title IX Coordinator or Assistant Title IX Coordinator, in coordination with others as necessary, will determine the appropriate manner of resolution for the particular report, which may include supportive measures or the initiation of a formal complaint.

E. Reporting Considerations

1. Timeliness of Report, Location of Incident

Complainants and third-party witnesses are encouraged to report incidents of prohibited conduct as soon as possible in order to maximize the University's ability to respond promptly and effectively. However, there is no time limit on reporting violations of this policy. If the respondent is no longer a student or employee, the University may not be able to proceed with a resolution process and/or take disciplinary action against the respondent.

An incident does not have to occur on campus to be reported to the University. Off-campus conduct may be covered, including conduct that occurs in the City of Lexington, City of Buena Vista, and County of Rockbridge, conduct that occurs in connection with University programs or events, and conduct that results in a continuing adverse effect while on campus or other property owned or controlled by the University or in any University employment or education program or activity.

2. Amnesty for Personal Use of Alcohol or Other Drugs for Students

The University seeks to remove any barriers to reporting. It is in the best interest of this community that all individuals who have been the subject of prohibited conduct report the behavior to the University, and that witnesses share what they know. To encourage reporting, student complainants, student witnesses, and student respondents will not be subject to disciplinary action by the University for their own personal consumption of alcohol or drugs at or near the time of the incident. While this provision applies to students, nothing in this section precludes the use of amnesty for employees in the University's sole discretion.

3. False Reporting

A complainant who makes a report that is later found to have been intentionally false or made maliciously without regard for truth, or anyone proven to have intentionally given false information during the course of an investigation or disciplinary proceeding, may be subject to disciplinary action under the University's Honor System or disciplinary action under the appropriate employee disciplinary policy, and may also violate state criminal statutes and civil defamation laws. This provision does not apply to reports made in good faith, even if the facts alleged in the report are not substantiated by an investigation and/or hearing decision. An allegation of false reporting cannot be investigated or heard until the underlying allegations have been resolved by the relevant conduct body.

VIII. Supportive Measures

A. Overview

At any time after the receipt of a report of prohibited conduct, the University may impose supportive measures designed to restore or preserve equal access to the University's education programs or activities for a complainant or respondent. Supportive measures are non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge. Supportive measures may not unreasonably burden the other party.

Supportive measures may be provided or implemented regardless of whether a formal complaint has been filed, and regardless of whether the complainant chooses to report to local law enforcement. Supportive measures may be utilized even if the conduct, if proven, would not constitute a policy violation. Upon receipt of a report of prohibited conduct, the University will promptly contact the complainant to discuss the availability of supportive measures. The imposition of a supportive measure assumes no determination of responsibility and is not a form of discipline.

A complainant or respondent may request supportive measures, or the University may choose to impose supportive measures at its discretion to ensure the safety of all parties, the broader University community, and/or the integrity of the investigative and/or resolution process. In determining appropriate and reasonably available supportive measures, the Title IX or Assistant Title IX Coordinator will consider the wishes of the party requesting the measures. Supportive measures may be temporary or permanent and may be modified by the University as circumstances change.

B. Range of Supportive Measures

Potential supportive measures, which may be provided to the complainant and/or the respondent to the extent reasonably available and appropriate under the circumstances, include but are not limited to:

- Access to counseling services and assistance in setting up initial appointments, both on and off-campus;
- Imposition of a mutual no-contact directive;
- Educational discussion with Respondent;
- Extensions of deadlines or other course-related adjustments;
- Providing alternative course-completion options or work arrangements;
- Change in class schedule, including the ability to transfer course sections or withdraw from a course without penalty;
- Change in work schedule or job assignment;
- Change in student's University-sponsored or University-controlled housing;
- Assistance from University support staff in completing housing relocation;
- Limit of an individual's or organization's access to certain University facilities or activities;
- Voluntary leave of absence;
- Providing an escort to ensure safe movement between classes and activities;
- Arranging a meeting with law enforcement or W&L Public Safety;
- Providing medical services; and/or
- Any other measure that can be tailored to the involved individuals to achieve the goals of this policy.

All individuals are encouraged to report concerns about the failure of another individual to abide by the terms of any implemented supportive measure. The University can impose disciplinary sanctions for failing to abide by a University-imposed supportive measure, such as a mutual no contact directive. For employees or volunteers, discipline will be handled by the Executive Director of Human Resources, the Provost's office, a department head, or designee. For students, the Vice President for Student Affairs and Dean of Students or designee have the discretion to address alleged violations of supportive measures by taking administrative actions, disciplinary or otherwise, or referring the matter for a formal conduct charge.

IX. Initiation of a Resolution Process: Filing a Formal Complaint

The University's resolution processes under this policy are initiated by the filing of a formal complaint. A complainant may submit a formal complaint by providing a written or electronic document to the Title IX or Assistant Title IX Coordinator alleging prohibited conduct against a respondent and requesting that the University investigate

the allegation. A formal complaint can be submitted to the Title IX or Assistant Title IX Coordinator in person, by mail (204 W. Washington St., Washington and Lee University, Lexington, VA 24450, email (kozaki@wlu.edu), or by submitting an online report. (<http://go.wlu.edu/harassmentreport>). The document must include the complainant's physical or digital signature, or in some way indicate that the complainant is the person filing the formal complaint.

The Title IX or Assistant Title IX Coordinator can file a formal complaint by submitting a signed writing. Where the Title IX or Assistant Title IX Coordinator has decided to file a formal complaint, the Title IX or Assistant Title IX Coordinator will notify the complainant. The University will not require a complainant to participate in any investigation or disciplinary proceeding.

A complainant who initially decides not to file a formal complaint may later decide to file a formal complaint. Additionally, the Title IX or Assistant Title IX Coordinator, after deciding not to file a formal complaint, may file a formal complaint if any new or additional information becomes available.

By filing a formal complaint, the Title IX or Assistant Title IX Coordinator is not determining that the allegations have merit or the policy has been violated, but is merely deciding that, based on the allegations, an investigation must be conducted. Where the Title IX or Assistant Title IX Coordinator signs a formal complaint, the Title IX or Assistant Title IX Coordinator is not a complainant or otherwise a party.

X. Dismissal of Formal Complaints

Any formal complaint may be dismissed, either in whole or in part, by the Title IX or Assistant Title IX Coordinator if at any time during the investigation or hearing prior to an HSMB or IRP decision: (1) a complainant notifies the Title IX or Assistant Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; (2) the respondent is no longer enrolled or employed by the University; (3) specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein; or (4) it is or becomes apparent that the allegations even if substantiated, would not constitute prohibited conduct as defined by this policy.

Whenever a formal complaint is dismissed, the Title IX or Assistant Title IX Coordinator will send written notice of the dismissal and the reason for the dismissal to both parties simultaneously. Upon any dismissal of a formal complaint, additional, non-disciplinary options for resolution may remain available, including supportive measures and informal resolution.

Prior to an HSMB or IRP decision, both parties have the option to appeal a dismissal decision by submitting a written appeal to the Title IX or Assistant Title IX Coordinator within three (3) calendar days after receiving written notice of the dismissal decision, who will then appoint one member of the HSMB or an IRO to review and determine the appeal, or, alternatively, the University may retain and use an external consultant or vendor. Either party can appeal on the following bases: (1) procedural irregularity that affected the outcome of the matter; (2) new evidence that was not reasonably available at the time of the determination regarding dismissal that could affect the outcome of the matter; (3) 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 individual complainant or respondent that affected the outcome of the matter. After a determination of the HSMB or IRP, appeals shall be made pursuant to Section XII.C. or Section XIII.I.

Upon receipt of an appeal of the dismissal decision, the parties will be notified and offered the opportunity to submit a written statement in support of or challenging the dismissal decision within three (3) calendar days of notification of the appeal. The appeal documents will be reviewed and a written decision, including the rationale, will be sent to both parties simultaneously.

XI. Informal Resolution

A. Informal Resolution for Complaints Against Students

After a formal complaint has been filed, the University may offer informal resolution for appropriate cases. Informal resolution is a method to resolve a report of prohibited conduct without a full investigation and adjudication. Depending on the circumstances and conduct at issue, it may encompass a broad range of conflict resolution strategies, including, but not limited to, mediation or shuttle diplomacy.

Participation in informal resolution is voluntary and the University will not compel either party to engage in informal resolution. Either party can request to end informal resolution at any time prior to agreeing in writing to a final resolution and proceed with the applicable resolution process. Likewise, the parties may request to begin informal resolution at any time prior to a decision of the HSMB hearing panel or Investigation and Review Panel (as applicable).

During informal resolution the parties may reach agreements, facilitated by the University, that may include disciplinary or punitive measures agreed to by a respondent.

In cases where informal resolution is utilized, the informal resolution will typically be completed within forty-five (45) calendar days of the beginning of informal resolution.

B. Informal Resolution for Complaints Against Employees or Other Nonstudents

When a report of prohibited conduct is made against an employee or other nonstudent, the University may, depending on the circumstances, take immediate and corrective action even without the initiation of a formal complaint. In appropriate cases, this may include discipline being imposed against a respondent.

A Human Resources staff member (including the Assistant Title IX Coordinator for Employment), a staff supervisor or Dean (in his/her role as faculty supervisor), and/or the Title IX Coordinator may informally resolve concerns themselves or may bring in others (with the consent of the parties), as appropriate, to assist with resolution. Any of the individuals listed above may also refer the matter for informal resolution to another individual given authority to assist with informal resolution. Once a matter has been informally resolved, referred, or the complainant decides to continue with a separate resolution process (other than informal resolution), the individual involved with the informal resolution will submit a written summary to the Title IX or Assistant Title IX Coordinator for review.

XII. Resolution Process for Complaints Against Students

The following procedures will be used if the respondent is a student at the time of the report. If the respondent is both a student and an employee:

- The student resolution procedures will apply if the respondent is a full-time student but not a full-time employee;
- The employee resolution procedures will apply if the respondent is a full-time employee but not a full-time student; or
- If there is a question as to the predominant role of the respondent, the Title IX or Assistant Title IX Coordinator, with consultation with others as necessary, will determine which of the procedures applies based on the facts and circumstances (such as which role predominates in the context of the conduct).

A. Investigation

When a formal complaint of allegations potentially constituting prohibited conduct against a student is filed, unless informal resolution is in process or the complaint is otherwise dismissed, the University will designate trained investigator(s) to conduct

an investigation. The University may use a single investigator or a team of two (2) investigators. Any investigator must be impartial and free of any conflict of interest. A party may raise an objection to the appointment of any investigator on the basis that such investigator is not impartial or has a conflict of interest. Such an objection must be made in writing, specify the basis for the objection, and be submitted to the Title IX or Assistant Title IX Coordinator within three (3) calendar days of the party being informed of the name(s) of the investigator(s). The Title IX or Assistant Title IX Coordinator will make the final determination on an investigator's ability to serve.

The University may consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other, where the allegations arise out of the same facts or circumstances, or if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident(s).

During the pendency of any resolution process, a complainant and respondent may each have their Advisor(s) (see Section III.A) present at any meeting or proceeding related to the resolution process.

After a notice of allegations has been provided to the parties, the investigator(s) will conduct the investigation in a manner appropriate in light of the circumstances of the case. The investigator(s) will coordinate the gathering of information from the complainant, the respondent, and any other individuals who may have information relevant to the determination. The investigator(s) will also gather any available physical evidence, including documents, communications between the parties, and other electronic records as appropriate. The complainant and respondent will have an equal opportunity to be heard, to submit information and evidence (both inculpatory and exculpatory), and to identify witnesses who may have relevant information.

The investigation is a neutral fact-gathering process. The respondent is presumed to be not responsible; this presumption may be overcome only where a Harassment and Sexual Misconduct Board hearing panel concludes that there is sufficient evidence, by a preponderance of the evidence, to support a finding that the respondent violated the policy.

Although all witnesses, the complainant, and the respondent are encouraged to participate in the investigative process, no party or witness is required to participate in the investigation or any form of resolution under this policy. If a party chooses not to participate in an investigation, the resolution process may still proceed.

1. Review of Evidence and Investigation Report

Upon conclusion of the investigation, but before completion of the investigation report, the investigator(s) will provide to each party and the party's Advisor(s), if any, all the evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint. This will generally occur within thirty (30) calendar days after a formal complaint is filed. The parties and their Advisors will be able to view the evidence, but are prohibited from downloading, printing, or in any way copying the documents and evidence, and must adhere to the privacy and confidentiality requirements as outlined in Section VI.

The parties will have ten (10) calendar days from their receipt of the evidence to submit a written response to the evidence, if desired. Any written responses, or portions thereof, to the evidence may be shared with the other party and the HSMB at the discretion of the investigator(s). The written response can include requests for follow-up interview(s) with existing witnesses, clarifying or providing any additional information that a party believes is relevant to the investigation, identifying any new witnesses who should be interviewed, and/or explaining any additional evidentiary materials that should be collected and reviewed to the extent that such items are reasonably available.

The investigator(s) will consider all written responses received and conduct any appropriate further investigation in response, at the sole discretion of the investigator(s).

Upon completion of the ten (10) calendar day review period, the investigator(s) will then have ten (10) calendar days to prepare a written investigation report that fairly summarizes the relevant evidence and synthesizes the areas of agreement and disagreement between the parties and any supporting information. The report will include as appendices all of the relevant evidence gathered during the investigation (and reviewed pursuant to the above requirements), except that irrelevant evidence will be removed and evidence outlined in Section XVII.B will be removed.

The investigation report will be shared with the parties and their Advisors, if any. The parties will have ten (10) calendar days from receipt of the investigation report to submit a written response to the report. Any written responses, or portions thereof, to the investigation report may be shared with the other party and the HSMB at the discretion of the investigator(s). In addition to comments about the investigation report itself, this written response can include arguments why evidence removed from the appendices, if any, is in fact relevant, as well as why additional evidence is irrelevant and should be removed. The investigator(s) may make changes to the investigation report based on those written comments at the discretion of the investigator(s).

The investigator(s) will then submit the report and appendices to the designated Chair of the Harassment and Sexual Misconduct Board for the specific matter.

B. Harassment and Sexual Misconduct Board (HSMB)

1. Empaneling the HSMB

From the pool of individuals appointed to serve as Chairs of the HSMB, one of them will be designated to serve as the Chair for a particular HSMB panel. The Chair of the HSMB will select and convene a hearing panel of the HSMB. Three (3) members of the HSMB will be chosen to serve as a hearing panel for each matter.

The Chair of the HSMB will inform the parties of the composition of the proposed HSMB hearing panel. Either party can object to the appointment of any of the HSMB panel members by providing articulable grounds of suspected bias, conflict of interest, an inability to be fair and impartial, or an inability to make an objective determination. This objection should be directed to the Chair of the HSMB. The Chair of the HSMB will make the final determination on an HSMB panel member's ability to serve.

Alternatively, the University may choose to retain and use an external consultant/vendor to serve/act as the HSMB.

2. Request to Have Witnesses Present at Hearing

At least five (5) days before the hearing, the parties shall submit a list to the Chair of the HSMB (or external consultant/vendor) requesting the presence of the investigator(s) or any witness(es) interviewed during the investigation that they would like to question at the hearing.

No party will be permitted to call as a witness at a hearing any witness that was not interviewed as part of the investigation.

3. Hearing Procedures

All hearings are closed to the public and are private to protect the privacy interests of all involved. Hearings will be audio or video recorded, however the HSMB's deliberations will not be recorded and shall remain private. Neither the parties, nor any witnesses, Advisors, or other participants will be permitted to make any audio or video recordings. Hearings will be live and may be conducted with all parties physically present in the same geographic location, or, upon request of either party, all parties will appear at the hearing virtually with technology enabling the parties to

simultaneously see and hear each other. A privacy screen for hearings where the parties are physically present or a virtual privacy screen for virtual hearings will be utilized, unless both parties request otherwise. Witnesses appearing live may be physically present at the hearing or may appear virtually.

The HSMB hearing panel (or external consultant/vendor) will review the investigation report and appendices prior to the hearing and will have access to these materials during the hearing. During the hearing, the HSMB hearing panel (or external consultant/vendor) may question the complainant, the respondent, any witnesses, and/or the investigator(s). The HSMB hearing panel shall restrict their questions to matters that the Chair of the HSMB deems relevant to the specific case.

All parties and their advisors will have electronic access to the investigation report, and all other evidence provided to the parties for review pursuant to Section XII.A.1. throughout the hearing. Both parties have the option to provide an opening and closing statement to the hearing panel. Both parties also have the option to ask the other party and any witnesses all relevant questions and follow-up questions, in the manner specifically discussed below.

The parties cannot orally pose questions directly to each other or to witnesses. However, the parties may submit written questions to the Chair of the HSMB to ask on their behalf to the relevant party or witness. The Chair of the HSMB will screen the questions and will not ask questions that violate the provisions in Section XVII.B., or questions that are irrelevant or repetitive. Additionally, the Chair of the HSMB has discretion to change the wording of the question, provided that the substance of the question remains the same. The Chair of the HSMB will explain to the party any decision to exclude a question or change the wording of the question.

The complainant and the respondent have the right to be present during the hearing. Neither parties nor witnesses are required to attend a hearing or submit to cross examination. If either party or a witness is not in attendance, the hearing may still proceed, findings may still be made, and sanctions may still be imposed. The HSMB hearing panel (or external consultant/vendor) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross examination or other questions.

Both a complainant and respondent have the right to provide relevant information during the hearing. Parties are expected to produce relevant information during the investigation and review process. If new, relevant information is presented for the first time at the hearing, the Chair of the HSMB (or external consultant/vendor) shall determine how to proceed in their sole discretion.

The HSMB will objectively evaluate all relevant evidence and will not make credibility determinations based on a person's status as a complainant, respondent, or witness. After evaluating the evidence, the HSMB hearing panel (or external consultant/vendor) members will deliberate and make a finding by a preponderance of the evidence as to whether the respondent is responsible for conduct in violation of this policy. At least two (2) members must vote "responsible" for a finding of responsibility.

4. Imposition of Sanction and Remedies

If the respondent is found "Responsible," the HSMB hearing panel (or external consultant/vendor) will determine what sanction is appropriate and whether remedies are necessary to restore or preserve the complainant's equal access to one or more of the University's education programs or activities.

The complainant and respondent, and other affected parties, as appropriate, will each have the opportunity to present a statement about the impact of the violation and/or requested sanctions. The HSMB hearing panel (or external consultant/vendor) will review these statements only if they find that the respondent is responsible for one or more violations of this policy.

The HSMB hearing panel (or external consultant/vendor) shall determine the appropriate sanction (or combination of sanctions). At least two (2) panel members must vote in favor of the imposition of each sanction or combination of sanctions.

In considering the appropriate sanction, the HSMB hearing panel (or external consultant/vendor) may consider the following factors:

- The respondent's prior conduct history, either at Washington and Lee or elsewhere, including any criminal convictions;
- The nature and violence of the conduct at issue;
- The impact of the conduct on the complainant;
- The impact of the conduct on the community, its members, or its property;
- Whether the respondent has accepted responsibility;
- Whether the respondent is reasonably likely to engage in the conduct in the future;
- The need to prevent similar conduct by this respondent; and/or
- Any other mitigating or aggravating circumstances, including the University's values.

In addition to sanctions, remedies may also be available to the complainant at any time after a finding of responsibility against the respondent. The Title IX or Assistant

Title IX Coordinator, in consultation with others as necessary, will determine any appropriate additional remedies. Examples of potential remedies are provided in Section VIII, but remedies are not limited to those supportive measures and do not need to avoid burdening the respondent. In the absence of a finding of responsibility, supportive measures may remain available to all parties.

a. Sanctions for Complaints Against Students

- Dismissal
- Suspension
- Community Service
- Educational/counseling consultation
- Loss of privileges (denial of the use of certain University facilities or the right to participate in certain activities or to exercise certain privileges for a designated period of time)
- Restitution (reimbursement for damages to property)
- On campus residential relocation
- Changing academic schedule
- Trespassing respondent from the University
- Probation
- Any other sanction deemed appropriate under the circumstances

5. Notice of Outcome

The Chair of the HSMB (or external consultant/vendor) shall simultaneously provide to the parties a copy of the written report of the HSMB hearing panel decision.

C. Appeal

Either party may appeal the finding of a policy violation/non-violation, and/or a sanction by the HSMB within three (3) calendar days of receipt of the written HSMB hearing report form. During the three (3) calendar day period between the written HSMB hearing report and the appeal deadline, the recording of the hearing will be made available to the parties and the parties' Advisor(s) for inspection and review subject to the privacy and confidentiality requirements of Section VI. Appeals must be submitted to the Title IX or Assistant Title IX Coordinator in writing and must specify in detail the basis for the appeal.

Either party can appeal on the following bases:

1. procedural irregularity that affected the outcome of the matter;

2. new evidence that was not reasonably available at the time the determination was made that could affect the outcome of the matter (The time frame for filing an appeal based on newly discovered information may be extended at the discretion of the Title IX Coordinator where the evidence could not reasonably have been discovered within the time frame and a compelling justification exists for its consideration);
3. the Title IX Coordinator, decision-maker(s), or investigator(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter;
4. the sanction lacked reasonable basis; and/or
5. extraordinary circumstances that affected the outcome of the matter.

Upon receipt of an appeal by the Title IX or Assistant Title IX Coordinator, an Appeal Panel (or external consultant/vendor) will be appointed to review the matter.

The parties will be notified of the appeal and offered the opportunity to submit a written statement in support of or against the appeal within three (3) calendar days.

The Appeal Panel (or external consultant/vendor) will review the parties' written request(s) for appeal, the parties' written statement(s) in support of or against the appeal(s) (if any), the entire written record, and any other documents or evidence (including any recording) that it deems relevant. In making its decision, the Appeal Panel (or external consultant/vendor) may decide the case based solely upon the written appeal and other documents or evidence it reviews, or the Appeal Panel (or external consultant/vendor) may seek additional information from: (1) any person who provided information to the HSMB hearing panel; (2) any person who may have new, relevant information; (3) the Title IX or Assistant Title IX Coordinator; (4) the investigator(s), and/or (5) the original Chair of the HSMB. In seeking additional information, the Appeal Panel (or external consultant/vendor) may, but is not required to, hold a hearing. The Appeal Panel (or external consultant/vendor) will defer to decisions of the HSMB hearing panel unless one or more of the appeal bases are satisfied.

The Appeal Panel (or external consultant/vendor) has the option to affirm the decision of the HSMB hearing panel or remand the case to the original HSMB hearing panel. Instead of remanding to the original HSMB panel, the Appeal Panel (or external consultant/vendor) may recommend that a new HSMB hearing panel (or external consultant/vendor) be convened if the Appeal Panel believes doing so is necessary for fundamental fairness, or if the appeal was granted due to a conflict of interest or bias of one or more of the original HSMB panel members.

At least two (2) members of the Appeal Panel must vote in favor of the appeal decision.

The Appeal Panel will draft a written notice of its decision and rationale and provide it simultaneously to both parties.

XIII. Resolution Process for Non-Title IX Complaints against Employees and other Nonstudents

Because the relationship of students, staff, and faculty to the University differ in nature, the procedures that apply when seeking disciplinary action necessarily differ in some respects. Each of the procedures, however, is guided by the same principles of fundamental fairness and respect for all parties, which require notice, an equitable opportunity to be heard, and an equitable opportunity to respond to a report.

The following procedures will be used if the respondent is an employee or other nonstudent at the time of the report. If the respondent is both a student and an employee:

- The student resolution procedures will apply if the respondent is a full-time student but not a full-time employee;
- The employee resolution procedures will apply if the respondent is a full-time employee but not a full-time student; or
- If there is a question as to the predominant role of the respondent, the Title IX or Assistant Title IX Coordinator, with consultation with others as necessary, will determine which of the procedures applies based on the facts and circumstances (such as which role predominates in the context of the conduct).

A. Process Upon Receipt of Formal Complaint

Upon receipt of a formal complaint of prohibited conduct against an employee or other nonstudent, the relevant Co-Chair (or external consultant/vendor) will promptly notify the respondent that a formal complaint has been initiated and make arrangements to meet with the respondent to provide the respondent with a written notice of allegations and outline the complaint process. The Co-Chair (or external consultant/vendor) will provide the respondent the opportunity to submit to the investigator(s), if desired, a written statement regarding the complaint to be included in the record. If the respondent chooses to submit a written statement, the respondent should do so within business (5) business days after being given notice of allegations.

B. Preliminary Actions by Co-Chair

The appropriate Co-Chair will promptly appoint an IRO to serve as the investigator. In some cases, the Co-Chair may appoint a team of two (2) investigators as the Co-Chair deems appropriate. The Co-Chair will then make a preliminary selection of three (3) IROs to serve as the Investigation and Review Panel. If an IRO is the respondent or the complainant, the process operates as otherwise set forth in this policy, except that the IRO who is the respondent or complainant will not be involved in any capacity other than as a party.

The Co-Chair may consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other, where the allegations arise out of the same facts or circumstances or if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident(s).

Alternatively, the University may choose to retain and use an external consultant/vendor to act in place of the Co-Chair, IROs, and Investigative Review Panels.

C. Investigation

The investigation is conducted solely by the appointed investigator(s), who will interview the parties and other witnesses as necessary. The complainant and respondent will have an equal opportunity to be heard, to submit information, and to identify witnesses who may have relevant information. In most cases, absent unusual circumstances, the investigation should be completed within thirty (30) business days after the formal complaint is received by the investigator(s).

During the pendency of an investigation, the parties may have their Advisor (see Section III.A) present at any meeting or proceeding during the complaint resolution process.

The investigation is a neutral fact-gathering process. The respondent is presumed to be not responsible; this presumption may be overcome only where the Investigation and Review Panel (or external consultant/vendor) conclude that there is sufficient evidence, by a preponderance of the evidence, to support a finding that the respondent violated the policy.

D. Investigation Report

Upon conclusion of the investigation, the investigator(s) will prepare and submit to the appropriate Co-Chair a written investigation report. The complainant and respondent will each be provided with the report (the University reserves the right to

redact witness names and personally identifiable witness statements). While the parties and their Advisors will be able to view the report, they are prohibited from downloading, printing, or in any way copying the documents and evidence, and must adhere to the privacy and confidentiality requirements as outlined in Section VI.

E. Party Responses to Investigation Report

The parties will each have five (5) business days from receipt of the investigation report to prepare and submit a written response to the appropriate Co-Chair for the record.

F. IRP Appointment

The appropriate Co-Chair will then promptly notify the parties of which IROs (or external consultant/vendor) have been selected to make up the Investigation and Review Panel (IRP). The parties must submit any concerns about the IRP composition to the Co-Chair in writing within one (1) business day of receipt of such notice. The Co-Chair may follow-up with the parties and/or IRP members regarding any stated concerns, as needed. The Co-Chair will notify the parties and IRP members of any change to the composition of the IRP if the Co-Chair concludes that one or more of the designated IRP members should not serve on that Investigation and Review Panel.

G. IRP Review

The IRP (or external consultant/vendor) will review the investigation report and the related record.

The IRP may decide the case based on a thorough review of the entire record of the case including the investigation report and any written comments provided by either party. If the IRP has any questions, it may meet with the investigator(s), other individuals or witnesses, and/or may request that the parties and their Advisors separately meet with the IRP. If the IRP meets with anyone as part of its review process and new, relevant information is provided, it will provide information about the new, relevant information to the parties and provide two (2) business days for the parties to review and comment. The IRP may also request that the investigator(s) conduct any follow-up that the IRP determines is necessary or advisable. If the investigator(s) conduct any such follow-up, the investigator(s) will submit an addendum to the written investigation report, which will be sent to the IRP and to the

parties and the parties' will be provided two (2) business days to review and comment.

Once the IRP has determined that it has sufficient information to make a decision, it will discuss the matter outside the presence of the investigator(s), the parties, and the parties' Advisors. The IRP will then reach a decision on whether this policy was violated by a preponderance of the evidence, and, if so, will make a written recommendation of sanctions to the appropriate Co-Chair. The IRP may also make recommendations to the Co-Chair for appropriate follow up actions (including, but not limited to, training, counseling, or other educational opportunities) in the absence of a finding of a violation of this policy.

H. Co-Chair's Notice to Parties of Final Decision, Sanctions, and Remedies

The IRP's decision about whether this policy was violated is binding on the Co-Chair, but subject to appeal by either party. The IRP recommendation as to sanction is binding on the Co-Chair except where the Co-Chair is aware of information or circumstances, which were not available and/or considered by the IRP, that impacts the sanction decision. In that situation, the Co-Chair may impose different sanction(s) if the IRP has found a violation of this policy or impose follow up actions in the absence of such a violation.

Where the University retained an external consultant/vendor, the consultant/vendor's decision is also subject to appeal by either party.

The potential sanctions include:

- Verbal or written warning;
- Referral to the Employee Assistance Program or other mandatory conditions, which may include training, or some other professional development;
- A no contact directive;
- Modified employment duties;
- Suspension with pay;
- Suspension without pay;
- Nonrenewal or non-reappointment;
- Demotion in rank or pay;
- Loss of rank;
- Denial of salary increase;
- Transfer to another position;
- Relocation of office;
- Dismissal from academic course if respondent is taking a course at the University;

- Termination or referral/recommendation for dismissal under the Faculty Dismissal Procedures; and/or
- Trespassing respondent from the University
- Any other sanction deemed appropriate under the circumstances.

If the respondent is a non-employee, sanctions include:

- Verbal or written warning;
- Trespassing the respondent from the University;
- Dismissal from academic course if respondent is taking a course at the University; and/or
- Modification or termination of the non-employee's relationship with the University.

Sanctions may be imposed in combination with one another. If the individual found to have violated this policy is a faculty member and the Co-Chair concurs with a sanction referral for or recommendation of termination, the case will proceed in accordance with the Faculty Dismissal Proceedings set forth in the Faculty Handbook where applicable. In such a case, the Co-Chair (Provost) is ineligible to serve as the President's designee under the "for cause" dismissal process.

Upon a finding of responsibility, additional remedies, in addition to the issued sanction, may be available to a complainant. Non-exhaustive examples of potential remedies are provided in Section VIII). The Title IX or Assistant Title IX Coordinator, in consultation with others as necessary, will determine any appropriate additional remedies.

Within two (2) business days of the decision, the Co-Chair will provide simultaneous notification to the parties of the report in the following manner: the findings on the allegations of a policy violation will be provided to each party; the recommended sanction(s) or follow up actions and the Co-Chair's decision on sanction(s) or follow up actions will be provided solely to the respondent, unless the sanctions or follow up actions are such that they directly involve the complainant (e.g. a "no contact" directive). Additionally, the Co-Chair will provide each party with an outcome letter. The outcome letter will review the prohibition against retaliation and the appeal process.

If, through informal resolution or Co-Chair decision upon a finding of no violation, a respondent has been advised to receive training, counseling, or some other professional development, or to take some other follow up action(s), the Co-Chair or other individual charged with facilitating the informal resolution process (as applicable) will oversee fulfillment of this obligation, though such oversight may be delegated to respondent's supervisor. If a respondent has been sanctioned for a

violation of this policy, the appropriate Co-Chair or Human Resources, as appropriate, will oversee fulfillment of the sanction.

I. Appeals Process

Either the complainant or respondent may appeal a finding of a violation or no violation of this policy and/or a sanction/follow up action of which they have been informed. Appeals must be in writing, specifying in detail why the decision on the appealed aspect(s) of the decision lack a reasonable basis, and must be filed with the Co-Chair (or external consultant/vendor) who issued the original decision within five (5) business days of receipt of that decision. The Appeal Panel's (or external consultant/vendor) review will then be conducted as soon as possible.

The Appeal Panel (or external consultant/vendor) will not substitute its judgment for the IRP or Co-Chair if it finds there was a reasonable basis for the appealed aspect(s) of the decision. In making such a determination, the Appeal Panel (or external consultant/vendor) may speak with, or gather information from, the Investigator(s), the appropriate Co-Chair, or the parties as the Appeal Panel deems necessary.

If the Appeal Panel (or external consultant/vendor) fully affirms a "no-violation" finding made by the IRP with or without recommended follow up actions, or affirms a finding of a violation and/or the sanction, the Appeal Panel (or external consultant/vendor) will issue a brief written decision to that effect and will submit it to the Co-Chair who issued the original decision, who will then promptly advise the parties of the Appeal Panel's decision, which is final.

If the Appeal Panel (or external consultant/vendor) affirms a "no-violation" finding made by the IRP, but does not affirm recommended follow up actions (or absence of such actions), the Appeal Panel will explain the facts and analysis supporting its findings and recommendations in part two of the Appeal Report. The Co-Chair issuing the original decision will then review the recommendations regarding any follow up actions and issue the final decision on such measures. The Co-Chair will then promptly advise the parties of the Appeal decision, which is final. The Co-Chair will advise only the respondent of any decision regarding follow up action(s) and will share information about sanctions only with the respondent, except for any part of such action(s) that directly involve(s) the complainant. The Co-Chair's decision on such follow up actions is final.

If the Appeal Panel (or external consultant/vendor) overturns a "no-violation" finding, the matter is sent back to the appropriate Co-Chair for the original review proceeding, who will then make a decision on the sanction and promptly advise the parties and share the two-part Appeal Report. The first part (which contains the basis for the

overturning of the "no-violation" finding) will be provided to both parties; the second part (which contains the Co-Chair's decision on sanction) will be provided only to the respondent, unless some part of the sanction directly involves the complainant. The Co-Chair's decision on sanction is appealable by respondent and complainant (if complainant was made aware of the sanction because it directly involved the complainant) within three (3) business days of receipt of the sanction decision. Such an appeal must be in writing, filed with the Co-Chair who issued the decision, and must specify in detail the basis for the appeal.

If the Appeal Panel (or external consultant/vendor) concurs with a violation finding but finds a sanction is without reasonable basis, it should first consult the appropriate Co-Chair to review the sanction. If no consensus decision can be reached, both the Appeal Panel (or external consultant/vendor) and the appropriate Co-Chair will submit their separate recommendations in writing to the President, who will make the final determination by accepting one of the two recommendations and signing off on that recommended sanction. Thereafter, the Co-Chair will promptly advise the respondent of the President or designee's decision on the sanction(s) and will also advise the complainant when the sanction involves the complainant. The President or designee's decision on the sanction(s) is final.

If the Appeal Panel overturns a violation finding, the matter is sent back to the appropriate Co-Chair for the original review proceeding, who will then remove the sanction(s) issued, decide any appropriate follow up action(s), and promptly share the two-part Appeal Panel decision with the parties. The first part (which contains the basis for the overturning of the violation finding) will be provided to both parties; the second part (which contains the Co-Chair's removal of sanction and decision on any follow up actions) will be provided only to the respondent, unless some part of the sanction directly involves the complainant.

J. Formal Complaint by or against a Co-Chair

If one of the Co-Chairs is the respondent or complainant, the President or designee will serve in the role of that Co-Chair and the process will operate as otherwise set forth in this policy. In this situation, any appeal would go to the Chair of the Audit Subcommittee of the Finance Committee of the Board of Trustees ("Audit Subcommittee") or designee.

XIV. Emergency Removal of Respondent

Notwithstanding the pendency of a matter before the HSMB or a sanction imposed by the HSMB, in accordance with the University policy regarding Required Administrative

Withdrawal for Non-Academic Reasons, the University may require a student to take an administrative withdrawal in circumstances outlined therein, including if there is a sufficient showing that the student is engaging, or is likely to engage in, behavior that presents a real danger of substantial harm to others, or substantially disrupts the learning environment and activities of the campus community.

Notwithstanding any other provision of this Section, if at any point after a report against an employee is made, the Title IX Coordinator/Assistant Title IX Coordinator for Employment and/or Co-Chair believes that an employee who is accused of violating this policy represents a danger to individuals or disruption to campus operations, the Title IX Coordinator/Assistant Title IX Coordinator for Employment and/or Co-Chair may request that the employee be placed on administrative leave pending the outcome of the complaint and any appeals. Such leave will be structured at the University's discretion.

XV. Miscellaneous Provisions

A. Professional Conduct Rules

The following rules of decorum and professionalism apply to all hearings and meetings during any resolution process governed by this policy. These rules apply equally to all parties, witnesses, and advisors.

- Any person present at any meeting or hearing must treat others at the meeting or hearing with courtesy and respect. This rule does not prohibit good faith expressions of dissent or criticism;
- Any cross-examination questions or techniques must not be for the purpose to harass or intimidate others;
- Disruptive behavior that hinders the orderly conduct of the meeting or hearing is prohibited;
- Interruptions, sarcasm, cursing, yelling, and insults are prohibited.

The investigator(s), Co-Chair, Chair of the HSMB or Appeal Panel, or any individual charged with facilitating any part of the informal resolution process has the authority to enforce these rules and to take steps necessary to ensure they are being followed.

Any person who does not follow these rules of decorum will be warned once. If the person continues to disregard the rules, such person may be asked to leave the meeting, interview, or hearing at the discretion of the person with authority to enforce the rules.

B. Specific Evidence Rules

1. Medical or Counseling Records Evidence

The University will not access, consider, disclose, or otherwise use any individual's medical or counseling records (as defined in Section III.M) for purposes of the investigation, adjudication, or resolution of any allegation or complaint made under this policy absent such individual's written consent. An individual may disclose his or her medical and/or counseling records voluntarily, but the University will not request consent for the release of any medical or counseling records, nor will the University require any individual involved in the processes set forth in this policy to release any such medical and/or counseling records.

2. Other Privileged Information

The University will not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege in writing.

C. Group Infractions

When members of an organization, team, committee, department, program, or other group of individuals acting collusively (a "group") allegedly act in concert in violation of this policy, a resolution process may proceed against the group and/or against one or more involved individuals, as appropriate given the available information and the circumstances. The determination as to whether to proceed with those involved as individuals and/or as a group may be made by the Title IX or Assistant Title IX Coordinator and/or the Co-Chair.

Leaders or officers, members of a group, and/or the group as a whole may be held collectively and/or individually responsible when violations of this policy by the group or its members take place at an group-sponsored event, have received the consent or encouragement of the group or of the group's leaders or officers, were known or reasonably should have been known to the group's membership or its leaders or officers, or involve the lesser of five (5) or more members or 50% of a particular group.

In any such action, determinations as to responsibility will be made and sanctions may be assigned collectively to those involved, individually in proportion to the involvement of each individual, and/or to the group as a whole. Notwithstanding the

foregoing, no determination(s) made and/or sanction(s) issued under this policy to any individual or group shall preclude or prohibit any other administrative action from being taken, disciplinary or otherwise, or any other conduct body from making a determination and/or imposing sanctions consistent with its own policies, procedures, or practices.

D. Disability Accommodations

Students or employees with disabilities can request accommodations to ensure their full and equal participation in any conduct process and/or proceeding. Student accommodation requests may be made directly to the Director of Disability Resources. Employee accommodation requests may be made directly to the Executive Director of Human Resources. Accommodations are determined on an individual basis pursuant to the relevant accommodation policy.

E. Alternative Resolution Process with External Consultant/Vendor

The University may in its sole discretion retain an external consultant/vendor to handle the process, or any part of the process exclusively, and without a panel.

Revision History

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