

# Interim Sexual Discrimination and Misconduct Policy

**Approved By:** President; Endorsed by Board of Trustees

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**Responsible Office:** Title IX/Section 504 Coordinator

**Related Policies:**

- [University Policy on Prohibited Discrimination, Harassment and Retaliation Other Than Sex](#)
- [Title IX at Washington and Lee University](#)

**Additional References:**

- [Quick Reference Guide for Washington and Lee Faculty and Staff](#)
- [Information for Faculty and Staff: Sexual Misconduct](#)
- [Resources Contact Information](#)
- [Policy FAQs](#)

[FAQs about the policy](#)

## I. Policy Statement

All forms of sexual misconduct are an affront to human dignity and fundamentally at odds with the values of Washington and Lee University (“W&L” or “University”).

The University is committed to fostering a climate free from sexual misconduct through clear and effective policies, a coordinated education and prevention program, and prompt and equitable procedures for resolution of complaints that are accessible to all. The University encourages all members of its community to participate in creating a safe, welcoming, and respectful environment on campus. Ultimately, all members of the community are expected to assume responsibility for their conduct. All members of the community are also encouraged to report behaviors that may violate this policy and to take reasonable and prudent actions to prevent acts of

sexual misconduct. The University will not tolerate retaliation against any individual who makes a report, participates or refuses to participate in a resolution process, or assists as a bystander to prevent sexual misconduct.

This policy addresses all forms of sexual misconduct (as defined in Section III below). This policy also prohibits retaliation. It prohibits these behaviors against individuals of any sex, gender identity, gender expression, or sexual orientation. This policy also prohibits failure to provide equal opportunity on the basis of sex in athletics; reports of this type of discrimination should also be brought to the attention of a Title IX Coordinator and will be addressed as appropriate.

The University also prohibits discrimination, harassment and retaliation on the basis of race, color, religion, national or ethnic origin, age, disability, veteran's status, and genetic information. The policy and procedures for complaints involving those protected categories are described in the separate Prohibited Discrimination, Harassment, and Retaliation Other Than Sex Policy ([go.wlu.edu/OGC/DiscriminationPolicy](http://go.wlu.edu/OGC/DiscriminationPolicy)).

The University will respond to all reports of sexual misconduct according to the severity and/or pervasiveness of the offense and the threat it poses to an individual and/or the community. Individuals who are found responsible for violating this policy may face disciplinary sanctions up to and including dismissal and/or termination of employment.

## II. 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.

The University is subject to Title IX of the Educational Amendments of 1972 ("Title IX"), 20 U.S.C. §§1681, et seq., which states that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." The University does not discriminate on the basis of sex and will not tolerate sexual misconduct in any form. Alleged sexual misconduct subject to this policy includes both Title IX sexual harassment (which is defined by law) and non-Title IX sexual misconduct (which includes allegations that do not meet the definitions under Title IX, but nonetheless violate the University's community standards), as discussed further in the Prohibited Conduct Definitions (Section V) below. There are certain distinctions between the procedures applicable to Title IX

sexual harassment and non-Title IX sexual misconduct, as discussed further in this policy.

While the process for reporting allegations of sexual misconduct is the same regardless of the type of sexual misconduct reported, different resolution procedures apply based on the underlying alleged misconduct and/or the classification of the respondent as either a student or employee/non-student. If Title IX applies, regardless of the classification of the respondent, the procedures set forth in Section XIV apply. If Title IX does not apply and the matter involves allegations of sexual misconduct made against a student, the procedures set forth in Section XIV also apply.<sup>1</sup> If Title IX does not apply and the matter involves allegations of sexual misconduct made against an employee or other nonstudent, the procedures set forth in Section XV apply. For additional information on how to determine which resolution process will apply, see Section XI.B.

To the extent permitted by law, the procedures set forth in this policy will be used to address all formal complaints made on or after the effective date of this policy, regardless of when the incident(s) occurred.

## 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 Title IX complaint resolution process, both parties have the right to an Advisor of Choice.
2. In the non-Title IX 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). In addition to the Hearing Advisor(s) or a DPA, both parties also have the right to an Advisor of Choice.
3. In the non-Title IX resolution process for complaints against employees or other nonstudents, both parties have the right to a Discrimination Policy Advisor (DPA). In addition to a DPA, both parties have the right to an Advisor of Choice.

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 the case of matters subject to the Title IX resolution process, Advisors are responsible for conducting cross-examination of the other party and any witnesses (see Section XIV.B.3).

In all cases, Advisors may accompany the party they are advising to any meeting, interview, or hearing in connection with a formal complaint of sexual misconduct. While Advisors may accompany the complainant and respondent at meetings, interviews, and hearings, they may not present evidence, and with the exception of cross-examination during the Title IX resolution process (see Section XIV.B.3), may not 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, with the exception of a Title IX HSMB hearing. If removal takes place at a Title IX HSMB hearing, the University will provide an advisor for the purposes of conducting cross-examination. A short continuance or recess may be needed for this purpose.

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. Advisor of Choice**

An Advisor of Choice is a person chosen by a party to advise such party and may be a friend, mentor, family member, attorney, University-trained advisor, University employee, or any other individual a party chooses to advise them. The University will provide a Hearing Advisor or Discrimination Policy Advisor to serve as the Advisor of Choice at no cost to a party, but any other individual whom a party selects to serve as such party's Advisor of Choice will be obtained at the party's own expense, if any fee is charged. Advisors of Choice must follow the rules applicable to Advisors set forth in Section III.A above.

## C. 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 Title IX complaints and non-Title IX 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. For non-Title IX 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. 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.

## D. Chair of the Appeal Panel

For Title IX complaints and non-Title IX complaints against students, the Chair of the Appeal Panel will be a Chair of the HSMB who was not involved in the original hearing. 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 XVIII.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 complainants or respondents generally or 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.

## E. Chair of the HSMB

For complaints of Title IX sexual harassment and complaints of non-Title IX sexual misconduct against students, the Chair of the HSMB is an individual designated to serve as Chair of the HSMB hearing panel. 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 XVIII.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.

## F. Co-Chairs

For complaints of non-Title IX sexual misconduct against employees or other nonstudents, the Co-Chair of the Investigation and Review Officers ("IROs") will be the Treasurer/Vice-President for Finance and Administration, the Provost, or any other individual designated to serve as Co-Chair. 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.

## G. Coercion

Coercion is the use of unreasonable and persistent pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. Coercion may be emotional, intellectual, psychological, or moral. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. In evaluating coercion, the University will consider: (1) frequency of the application of pressure; (2) intensity of the pressure, (3) isolation of the person being pressured; and (4) duration of the pressure. Coercing an individual into engaging in sexual activity violates this policy in the same way as physically forcing someone into engaging in sexual activity.

## H. Complainant

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

## I. Consent

Individuals who choose to engage in sexual activity of any type must first obtain the consent of the other party. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity.

Additional Guidance about Consent:

- Consent to one form of sexual activity does not, by itself, constitute consent to engage in all forms of sexual activity.
- Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. Consent may not be inferred from silence, passivity, lack of resistance, or lack of an active response alone. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving consent.
- A verbal "no" is a clear demonstration of the lack of consent, but is not the sole way to demonstrate a lack of consent.
- Individuals with a previous or current intimate relationship do not automatically give either initial or continued consent to sexual activity. Even in the context of a relationship, there must be mutually understandable communication that clearly indicates a willingness to engage in sexual activity.
- Either party may withdraw consent at any time. Withdrawal of consent should be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.
- Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct, and does not diminish one's responsibility to obtain consent.
- Consent is not effective if it results from the use or threat of physical force, intimidation, or coercion, or any other factor that would eliminate an individual's ability to exercise free will to choose whether or not to have sexual contact. See the definitions of Force and Coercion in this Section for further discussion.
- An individual who is physically incapacitated from alcohol or other drug consumption (voluntarily or involuntarily) or is asleep, unconscious, unaware, or otherwise physically helpless is considered unable to give consent. See the definition of Incapacitation in this Section for further discussion.

## J. 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.

## K. Force

Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity.

## L. Formal Complaint

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

## M. 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 of Title IX sexual harassment and complaints of non-Title IX sexual misconduct 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. All members of the HSMB are specially trained to adjudicate cases of sexual misconduct.

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.

## N. 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.

## O. Incapacitation



An individual who is incapacitated cannot consent to sexual activity. Incapacitation is defined as the inability, temporarily or permanently, to give consent because an individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring.

In other words, a person may be considered unable to consent due to incapacitation if the person is not able to understand the who, what, where, when, why, and/or how of a sexual interaction.

In evaluating whether consent was present in cases of alleged incapacitation, the University asks three questions: (1) Was complainant incapacitated?, (2) If so, did the respondent know that the complainant was incapacitated?, and (3) If not, would a sober, reasonable person in the same situation have known that the complainant was incapacitated based on objectively and reasonably apparent indications of incapacitation.

Where alcohol or other drugs are involved, incapacitation is a state beyond drunkenness or intoxication. The impact of alcohol and other drugs varies from person to person; however, common warning signs that a person may be incapacitated or approaching incapacitation as a result of alcohol or drug use or consumption may include, but are not limited to, slurred speech, vomiting, unsteady gait, odor of alcohol, incontinence, combativeness, or emotional volatility.

An individual who engages in sexual activity with someone the individual knows or reasonably should know is incapable of giving consent is in violation of this policy.

## P. Investigation and Review Officers

Investigation and Review Officers (IROs) are a group of individuals who are specially trained to investigate and review complaints of non-Title IX sexual misconduct against employees and other non-students. When a formal complaint of non-Title IX sexual misconduct 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. 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
- 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)
- Chief Technology Officer
- Director of Athletics
- Executive Director of University Facilities
- Vice President for University Advancement
- Vice President for Admissions and Financial Aid

## Q. 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 of non-Title IX sexual misconduct against employees and other nonstudents. The IRP is made up of three (3) IROs selected by the Co-Chair.

## R. 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.

## S. Non-Title IX

The term non-Title IX means not within the federally prescribed definition of Title IX sexual harassment as set forth in Title IX of the Education Amendments of 1972 and its implementing regulations.

## T. 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.

## U. 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 Title IX complaints and non-Title IX complaints against students; and (3) the resolution process for non-Title IX complaints against employees and other nonstudents.

## V. Respondent

For allegations of Title IX sexual harassment, the term respondent refers to the individual who has been reported to be the perpetrator of conduct that could constitute Title IX sexual harassment under this policy. For allegations of non-Title IX sexual misconduct, the term respondent refers to the individual(s) or group who has/have been accused of conduct that could constitute non-Title IX sexual misconduct under this policy.

## W. Sexual Misconduct

The term sexual misconduct refers to Title IX sexual harassment and non-Title IX sexual misconduct, each as defined in Section V.

## X. 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.

## Y. Title IX Coordinator

The University's Title IX Coordinator is Lauren E. Kozak. The Title IX Coordinator receives reports of sexual misconduct 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 Coordinator is:

- Responsible for the oversight of the resolution of all reports of sexual misconduct involving students, staff, and faculty as well as volunteers and third parties;
- Knowledgeable and trained in University policies and procedures, relevant state and federal laws, and all other topics required by Title IX and other relevant laws;
- 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 of sexual misconduct;
- Responsible for monitoring compliance with all procedural requirements, record keeping and time frames outlined in this policy;
- Responsible for overseeing training efforts, and reviews of climate and culture and patterns of sexual misconduct;
- Responsible for conducting or overseeing investigations of formal complaints;
- Responsible for the oversight of the resolution of complaints involving gender equity in athletics, admissions, and employment; and
- Responsible for the implementation of supportive measures upon a report of misconduct and any remedies imposed as a result.

The Title IX Coordinator is supported in these responsibilities by Mary E. Main, the Executive Director of Human Resources, who serves as the Assistant Title IX Coordinator for Employment.

## 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, Elrod Commons 237, [\(540\) 458-4055](tel:5404584055), [kozakl@wlu.edu](mailto: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 regarding the University's response to their<sup>2</sup> 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](mailto:OCR.DC@ed.gov)*

## V. Prohibited Conduct and Jurisdiction

W&L prohibits and will not tolerate sexual misconduct or retaliation in any form. Violations of this policy are subject to any combination of sanctions, up to and including suspension, dismissal, and/or termination of employment. Sexual misconduct affects individuals of all genders, gender identities, gender expressions, and sexual orientation, and does not discriminate by racial, social, or economic background.

Title IX of the Education Amendments of 1972 (Title IX) covers conduct that meets a federally prescribed definition of sexual harassment, which this policy refers to as Title IX sexual harassment (see Section V.A below for definition). If alleged prohibited conduct does not fall under the definition or jurisdiction of Title IX sexual harassment, this policy will still apply to such prohibited conduct as non-Title IX sexual misconduct in the following circumstances:

- The conduct occurs on the campus of 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; and/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.

For ease of reference, prohibited conduct that is not covered by Title IX will be referred to as non-Title IX sexual misconduct throughout this policy (see Section V.B below for definition). The University will review all reports of alleged misconduct, regardless of where the conduct occurred, to determine whether jurisdiction exists.

## A. Title IX Sexual Harassment

Title IX sexual harassment means conduct on the basis of sex that occurs in a University education program or activity, against a person in the United States, and satisfies one or more of the following:

- A University employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity;
- Nonconsensual Sexual Penetration;
- Nonconsensual Sexual Contact;
- Incest;
- Statutory Nonconsensual Sexual Penetration;
- Dating violence;
- Domestic violence; and/or
- Stalking.

A University education program or activity is defined as locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

## B. Non-Title IX Sexual Misconduct

Non-Title IX sexual misconduct means conduct that does not constitute Title IX sexual harassment, but that meets the jurisdictional requirements for non-Title IX sexual misconduct set forth above and satisfies one or more of the following:

- Nonconsensual Sexual Penetration;
- Nonconsensual Sexual Contact;

- Sexual Discrimination;
- Non-Title IX Sexual Harassment;
- Sexual Exploitation;
- Dating violence;
- Domestic violence; and/or
- Stalking.

## C. Nonconsensual Sexual Penetration

Nonconsensual sexual penetration means penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without consent.

## D. Nonconsensual Sexual Contact

Nonconsensual sexual contact means the touching of the private body parts of another person, either under or over clothing, for the purpose of sexual gratification without consent. Private body parts include breasts, genitals, mouth, and buttocks.

## E. Incest

Incest means non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law<sup>3</sup>.

## F. Statutory Nonconsensual Sexual Penetration

Statutory nonconsensual sexual penetration means non-forcible sexual intercourse with a person who is under the statutory age of consent<sup>4</sup>.

## G. Sexual Discrimination

Sexual discrimination means unequal treatment based on an individual's sex, sexual orientation, gender identity, or gender expression 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.

## H. Non-Title IX Sexual Harassment

Non-Title IX sexual harassment means any unwelcome conduct of a sexual nature (e.g., sexual advances, request for sexual favors, or other unwanted verbal or physical conduct of a sexual nature) or unwelcome conduct based on sex, sexual orientation, gender identity, or gender expression, when one or more of the following conditions are present:

- Submission to the unwelcome conduct is an expressed or implied condition of an individual's employment, evaluation of academic work, or any aspect of a University program or activity;
- Refusal to submit to unwelcome conduct resulted in a tangible academic or employment detriment; and/or
- The unwelcome conduct is so 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.

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.

## I. Sexual Exploitation

Sexual exploitation means taking advantage of the sexuality of another person without consent. Examples of sexual exploitation include, but are not limited to, the following:



- Observing another individual's nudity or sexual activity or allowing another to observe nudity or sexual activity without the consent of all parties involved in a place where the individual being observed would have a reasonable expectation of privacy;
- Recording, streaming, or photographing private sexual activity and/or a person's nudity, or distribution of such without the consent of all parties involved;
- Prostituting another individual;
- Disrobing or exposing another without their consent; and/or
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

## J. Domestic and Dating Violence

Domestic violence means violence committed by:

- A current or former spouse or intimate partner of the complainant;
- A person with whom the complainant shares a child in common;
- A person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner; or
- Any other person against a complainant who is protected from that person's acts under the domestic or family violence laws of Virginia (18.2-572, 18.2-61 et seq.), which includes parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents, grandchildren, and in-laws.

Dating violence means violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the complainant; and
- Where the existence of such a relationship shall be determined based on (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

Domestic and/or dating violence includes sexual or physical violence or the threat of that violence<sup>5</sup>.

Domestic and/or dating violence may involve one act or an ongoing pattern of behavior.

## K. Stalking

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.

Course of conduct means two or more acts, including, but not limited to, acts in which the alleged stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.

## L. Retaliation

Retaliation means to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or 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 sexual 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. For purposes of clarification, violations of confidentiality requirements in Section VII may constitute retaliation if such violation otherwise meets the definition of retaliation set forth in this policy. While disclosing information as permitted under Section VII is generally not retaliation, it may constitute retaliation if disclosures are 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 an HSMB or 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.

## VI. Resources

The first priority for any individual after experiencing an incident of sexual misconduct should be personal safety and wellbeing. The University encourages all individuals who have experienced sexual misconduct 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, ordained clergy, and off-campus rape crisis counselors, 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, off-campus rape crisis resources, 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. All employees are encouraged to share any report of sexual misconduct with a Title IX Coordinator, and some employees are considered Authorized Employees or Mandatory Reporters. More information about these designations and how to report to campus authorities can be found in Section VIII.B.

## 1. Medical Care

Medical care is important to treat any injuries, screen for and treat sexually transmitted infections (STIs), provide emergency contraception, and pursue evidence collection.

- 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

(This is the closest hospital that can conduct a forensic exam by a Sexual Assault Nurse Examiner. The purpose of a forensic exam is to document and collect evidence of sexual contact and/or physical trauma. When there is suspicion or concern that an assault may have been facilitated by the use of drugs, the forensic exam may also include the collection of urine and blood samples for toxicology testing. Individuals are not required to report an incident to law enforcement or

the University in order to receive a forensic exam. Both Project Horizon and W&L Public Safety can assist with transportation. An individual can coordinate transport from Public Safety through the Student Health Center.)

## 2. Counseling/Professional Support Resources

- W&L Student Counseling Center: Phone: (540) 458-8590 Location: Early Fielding Building
- Project Horizon: Phone: (540) 463-2594 Location: 120 Varner Lane
- Employee Assistance Program (EAP): (800) 992-1931

## 3. Hotlines

- **Virginia State Domestic & Sexual Violence Hotline (VSDS)**  
(800) 838-8238 (24-hour hotline)  
<http://www.dss.virginia.gov/community/dv/>
- **National Domestic Violence Hotline (NDV)**  
(800) 799-7233 (SAFE)  
[www.thehotline.org](http://www.thehotline.org)
- **Rape, Abuse and Incest National Network (RAINN)**  
(800) 656-4673  
[www.rainn.org](http://www.rainn.org)

## 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.

## VII. Privacy and Confidentiality

The University is committed to protecting the privacy of all individuals involved in a report of sexual misconduct. 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 against students, 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 student respondent was found "Responsible" or "Not Responsible." If there is a finding of responsibility, 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.

## VIII. Reporting

### A. Reporting to Law Enforcement

The University encourages complainants to pursue criminal action for incidents of sexual misconduct 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

Project Horizon can provide information to complainants about criminal reporting, investigations, as well as civil and criminal court proceedings involving sexual assault, stalking, or dating/domestic violence. Project Horizon advocates may accompany complainants to court dates and appointments with law enforcement officers, the Commonwealth's Attorney, Court Services Unit, and other legal proceedings and answer questions about these processes. To speak with Project Horizon's legal advocate, call (540) 463-8761.

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 sexual misconduct 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.

Pursuant to and as required by Virginia law, the University must disclose information regarding a report of sexual misconduct to law enforcement if (1) it is a report of sexual violence, which means physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent; (2) the sexual violence is alleged to have been committed against a student attending the University, or may have occurred on certain locations as defined by Virginia law; and (3) disclosure of the information is deemed necessary to protect the health or safety of the student or other individuals by the three-person University Review Committee (the Review Committee is composed of the Title IX Coordinator, a representative from Student Affairs, and a representative from Public Safety). If the alleged act of sexual violence is a felony crime of sexual violence under Virginia law, disclosure must, under applicable law, also be made to the Commonwealth's Attorney without the release of any personally identifiable information (unless such information was deemed necessary by the Review Committee to be disclosed to law enforcement in accordance with the applicable law). See [Va. Code § 23.1-806](#). In the event of a disclosure, complainants retain the right to decline to participate in any investigation or to request that a criminal investigation not proceed.



In making the determination as to whether disclosure is necessary to protect the health or safety of the student or other individuals, the Review Committee will make this determination based upon the totality of the known circumstances and will be guided by a consideration of the following factors:

- Whether the respondent has prior arrests and/or is the subject of prior reports and/or complaints related to any form of sexual misconduct;
- Whether the respondent has any history of violent behavior;
- Whether the respondent has a history of failing to comply with any University No-Contact Directives, other University protective measures, and/or judicial protective order;
- Whether the respondent has threatened to commit further violence;
- Whether the alleged sexual violence involved multiple respondents;
- Whether the alleged sexual violence involved physical force;
- Whether the alleged sexual violence may have been facilitated through the use of "date-rape" or similar drugs or intoxicants;
- Whether the complainant is a minor (under 18);
- Whether any other aggravating circumstances are present.

## 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 sexual misconduct of an incident of sexual misconduct in person, by telephone, in writing, by email, or through an online report. A report may be accompanied by a request:

- for supportive measures,
- 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. The University provides support that can assist in making these important decisions, and to the extent possible (based on the factors in the policy at Section IX), will respect an individual's autonomy in deciding how to proceed.

All W&L community members are encouraged to report all incidents of sexual misconduct or retaliation 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**

Elrod Commons 237

Phone: [540.458.4055](tel:540.458.4055)

Email: [kozakl@wlu.edu](mailto:kozakl@wlu.edu)

Online Report: [go.wlu.edu/sexualmisconductreport](http://go.wlu.edu/sexualmisconductreport)

- **Mary E. Main, Assistant Title IX Coordinator for Employment**

Office of Human Resources

Two South Main 109

Phone: [540.458.8920](tel:540.458.8920)

Email: [mmain@wlu.edu](mailto:mmain@wlu.edu)

- **Department of Public Safety**

Public Safety Dispatch on E. Denny Circle

Phone: [540.458.8999](tel: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 sexual misconduct 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 for Employment to ensure consistent application of the policy to all individuals.

W&L has identified certain groups of employees as Authorized Employees and Mandatory Reporters for purposes of complaints of sexual misconduct. Both Authorized Employees and Mandatory Reporters are required to report to a Title IX Coordinator all relevant details (obtained directly or indirectly) about an alleged incident of sexual misconduct, including dates, times, locations, and names of parties and witnesses.

The following Authorized Employees have the authority to institute corrective measures regarding complaints of sexual misconduct. A report to one of these individuals constitutes actual notice to the University of a report of sexual misconduct:

- Title IX Coordinator
- Assistant Title IX Coordinator for Employment
- Vice President for Student Affairs and Dean of Students
- Assistant Dean of Law Student Affairs
- Provost
- Associate Provost

- Dean of the School of Law
- Associate Dean of the School of Law
- Dean of the College
- Associate Deans of the College
- Dean of the Williams School
- Associate Dean of the Williams School
- Director of Athletics
- Director of Public Safety
- Assistant/Associate Director of Public Safety
- Vice President for Finance/Treasurer

The following additional Mandatory Reporters must report complaints of sexual misconduct to a Title IX Coordinator (Note: a report to the individuals below does not constitute actual notice to the University)<sup>6</sup>:

- Associate and Assistant Athletic Directors
- Athletic Team Coaches, Assistant Coaches, and Athletic Trainers
- Directors of Legal Clinics
- Faculty and staff accompanying students on off-campus programs or other University-related trips, within and outside the United States
- Undergraduate Faculty Department Heads and Program Chairs
- Resident Advisers and Community Assistants
- Shepherd Program-Associate Director and Assistant Directors
- Officers of Public Safety
- Dean of Student Life
- Student Affairs Class Deans
- Director of Sustainability Initiatives and Education
- Associate Director for International Education
- Director of Residence Life
- Dean of Career and Professional Development
- Director of Student Activities
- Director of Outdoor Education
- Dean for Diversity, Inclusion and Student Engagement
- Assistant Dean, Office of Career Strategy, Law School
- Associate Director of Intramurals and Adventure Programs
- Asst. Director, Leadership Development & Student Engagement
- Chief Technology Officer
- Executive Director of Facilities

## C. Anonymous Reporting

With the exceptions of Authorized Employees and Mandatory Reporters, any individual may make an anonymous report concerning incidents of sexual misconduct. 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 Sexual Misconduct Reporting Form can be found at: [go.wlu.edu/sexualmisconductreport](https://go.wlu.edu/sexualmisconductreport).

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 sexual misconduct, the Title IX Coordinator or Assistant Title IX Coordinator for Employment will promptly contact the complainant, if known, to discuss resolution options, including the availability of supportive measures (Section X) 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. The Title IX Coordinator or Assistant Title IX Coordinator for Employment will ensure that the complainant receives a written explanation of available resources and options.

After speaking with the complainant, if the complainant has expressed a desire to proceed with a formal complaint, the University will 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 for Employment, in coordination with others as necessary, will determine the appropriate manner of resolution for the particular report following the guidelines in Section IX, 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 sexual misconduct 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, but it will offer and provide supportive measures to a complainant.

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. The University will process all complaints regardless of where the conduct occurred to determine whether Title IX or other University conduct provisions contained in this policy may apply.

## 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 sexual misconduct 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.

# IX. Complainant Autonomy Regarding Manner of Resolution

After receipt of a report of sexual misconduct, the University will act consistent with a complainant's request where possible.

If the complainant files a formal complaint, the University will always proceed pursuant to the relevant resolution process. If a complainant files a formal complaint and requests informal resolution instead of an investigation and/or hearing process, the University will determine whether informal resolution is appropriate.

Where a complainant makes a report but declines to file a formal complaint, the Title IX Coordinator will determine, based on the available information, whether to file a formal complaint. This decision will be based on an evaluation as to whether failing to file a formal complaint over the complainant's objections would be clearly unreasonable in light of the known circumstances.

In determining whether the Title IX Coordinator will file a formal complaint, the Title IX Coordinator will consider a range of factors, including, but not limited to:

- The severity and impact of the conduct, including whether a weapon was used;
- Whether the complainant is a minor under the age of 18;
- Whether other reports of sexual misconduct have been made against the respondent;
- Whether the respondent threatened further violence or other violence against the complainant or others;
- Whether the respondent is an employee;
- Whether the university possesses other means to obtain relevant evidence of the alleged sexual misconduct (security cameras, video recordings, photographs or other evidence); and
- The extent of prior remedial methods taken with the respondent.

The presence of one or more of these factors could lead the Title IX Coordinator to file a formal complaint. In considering the factors, the Title IX Coordinator will consider whether specific circumstances would prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint. If so, then even if factors are met, the Title IX Coordinator may decide not to file a formal complaint.

In considering an individual's request not to proceed with a formal complaint, the Title IX Coordinator or Assistant Title IX Coordinator for Employment may consult with the University's Threat Assessment Team, other University personnel, and/or law enforcement authorities, as appropriate.

Where the Title IX Coordinator has decided to file a formal complaint, the 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 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 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 Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

## X. Supportive Measures

### A. Overview

At any time after the receipt of a report of sexual misconduct, 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 by the complainant or the Title IX Coordinator, 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 sexual misconduct, 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 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.

The University will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures.

## 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;
- Education and/or 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, or a department head. For students, the Vice President for Student Affairs and Dean of Students has 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.

## XI. Initiation of a Resolution Process

### A. 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 Coordinator alleging sexual misconduct against a respondent and requesting that the University investigate the allegation. A formal complaint can be submitted to the Title IX Coordinator in person, by mail (Elrod Commons 237, Washington and Lee University, 204 W. Washington Street, Lexington, VA 24450, email ([kozakl@wlu.edu](mailto:kozakl@wlu.edu)), or by submitting an online report ([go.wlu.edu/sexualmisconductreport](https://go.wlu.edu/sexualmisconductreport)). 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. A complainant can only file a formal complaint if, at the time they file the complaint, the complainant is participating in or attempting to participate in a University program or activity.

The Title IX Coordinator can file a formal complaint by submitting a signed writing. The Title IX Coordinator will only file a formal complaint after evaluating the factors in Section IX.

## B. Decision Regarding Appropriate Resolution Process

Upon receipt of the formal complaint the Title IX Coordinator will determine whether, if proved, the sexual misconduct alleged in the formal complaint would constitute Title IX sexual harassment, as defined in Section V.A. If so, the formal complaint will proceed according to the procedures in Section XIV. If not, the Title IX Coordinator will dismiss the formal complaint for purposes of any form of Title IX sexual harassment and the complaint may proceed under other applicable procedures outlined in this policy (see Sections XIV and XV). Informal resolution may also be available for appropriate cases as described in Section XIII.

A formal complaint will not proceed as Title IX sexual harassment in the following circumstances:

- The conduct alleged in the formal complaint, even if proved, would not constitute Title IX sexual harassment as defined in Section V.A
- The conduct alleged in the formal complaint did not occur in the University's education program or activity;
- The conduct alleged did not occur against a person in the United States; or
- The respondent(s) is/are an organization or group rather than an individual or individuals.

If the Title IX Coordinator determines that Title IX does not apply to the formal complaint, the Title IX Coordinator will promptly send written notice of the Title IX dismissal and reasons for the dismissal to the complainant and respondent. The notice

will notify the parties whether the complaint will proceed as Non-Title IX sexual misconduct. Both parties have the option to appeal the initial decision that Title IX does not apply to the formal complaint by following the procedures outlined in Section XII.

If Title IX does not apply, the appropriate procedures will be determined based on the identity of the respondent at the time of the report. If the respondent is a student at the time of the report the student resolution procedures will be used (Section XIV). If the respondent is an employee or other nonstudent at the time of the report the nonstudent resolution procedures will be used (Section XV). 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 Coordinator will determine which of the procedures applies based on the facts and circumstances (such as which role predominates in the context of the conduct).

If some but not all of the conduct alleged in the formal complaint constitutes Title IX sexual harassment, the University may choose to address the entire matter through the resolution process for Title IX complaints as set forth in Section XIV.

Regardless of which process the formal complaint will be proceeding under, the Title IX Coordinator or relevant Co-Chair, as applicable, will provide a written notice of allegations to the known parties.

## XII. Dismissal of Formal Complaints

For formal complaints proceeding under the resolution process for Title IX sexual harassment, if at any time during the resolution process it becomes apparent that: (1) the conduct alleged in the formal complaint would not constitute Title IX Sexual Harassment, even if proved; (2) the conduct alleged in the formal complaint did not occur in the University's education program or activity; (3) the conduct alleged in the formal complaint did not occur against a person in the United States; or (4) the respondent is a group rather than an individual, then the formal complaint will be dismissed. For purposes of clarification, a dismissal as described above means that the formal complaint will no longer proceed in accordance with the resolution process for Title IX sexual harassment matters. If a formal complaint is dismissed for purposes of Title IX sexual harassment, the formal complaint may still proceed as non-Title IX sexual misconduct in accordance with another resolution process under this policy, at

the discretion of the Title IX Coordinator. Any Title IX dismissal decision under this Section applies prospectively, meaning that from the date of the dismissal forward, other resolution procedures may apply. In most cases, the University will not go back to repeat or modify steps in the resolution process that have already been completed. The procedural protections available for each of the different resolution processes provide adequate safeguards to ensure a thorough, fair, and equitable process. The differences in the resolution processes under this policy simply reflect requirements necessary for compliance with federal and state legal requirements and/or the University's recognition of the difference in relationships between the University and its students, employees, and other nonstudents.

Any formal complaint, regardless of the resolution process it is proceeding under, may be dismissed, either in whole or in part, by the 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 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) for formal complaints proceeding under a resolution process for non-Title IX misconduct, it 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 Coordinator or the HSMB panel, as applicable, will send written notice of the dismissal and the reason for the dismissal to both parties simultaneously. If a Title IX complaint is dismissed under this section prior to a determination by the HSMB, the notice will notify the parties whether the complaint will proceed according to another resolution process set forth in this policy. 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 Coordinator within three (3) calendar days after receiving written notice of the dismissal decision. The Title IX Coordinator will then appoint one member of the HSMB or an IRO to review and determine 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 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, and/or (4) for Title IX dismissals, the decision regarding the lack of Title IX jurisdiction lacked reasonable basis. After a determination on the merits of the complaint by the HSMB or IRP, appeals shall be made pursuant to Section XIV.C. or Section XV.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.

## **XIII. Informal Resolution**

### **A. Informal Resolution for Complaints of Title IX Sexual Harassment and Complaints of Non-Title IX Sexual Misconduct 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 sexual misconduct 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). Informal resolution, even if voluntary, cannot be used in cases involving allegations that an employee engaged in Title IX sexual harassment against a student.

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 non-Title IX Complaints Against Employees or Other Nonstudents**

When a report of non-Title IX sexual misconduct 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 Coordinator for review.

## XIV. Resolution Process for Title IX Complaints and Non-Title IX Complaints Against Students

### A. Investigation

When a formal complaint of allegations potentially constituting Title IX sexual harassment or non-Title IX sexual misconduct against a student is filed, unless informal resolution is in process, 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 Coordinator within three (3) calendar days of the party being informed of the name(s) of the investigator(s). The Title IX Coordinator will make the final determination on an investigator's ability to serve.

For complaints constituting potential Title IX sexual harassment, the Title IX Coordinator 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 of Title IX sexual harassment arise out of the same facts or circumstances. For complaints of non-Title IX sexual misconduct against students, the Title IX Coordinator may consolidate multiple reports against a single respondent or group of respondents into one investigation 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.

The investigator(s) will ensure that the burden of proof and the burden of gathering evidence rests on the University and not on the parties.

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. Parties who are invited or expected to participate in a hearing, investigative interview, or other meeting related to the resolution process will receive written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with sufficient time to prepare to participate.

## **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 VII.

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 XVIII.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. In cases against students, faculty will not serve on the hearing panel.

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.

## 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 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. For complaints of non-Title IX sexual misconduct against students, 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 with technology enabling all parties and the witness to simultaneously see and hear each other. Hearings will generally take place within twenty (20) calendar days after the submission of the investigation report to the parties.



The HSMB hearing panel 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 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 XIV.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 (i.e., through advisors for hearings involving Title IX sexual harassment and in writing for hearings involving non-Title IX sexual misconduct).

For hearings involving complaints of Title IX sexual harassment, such cross-examination will be conducted directly, orally, and in real time by the party's Advisor of Choice. Only relevant cross-examination questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the Chair of the HSMB must first inform the parties whether the question is relevant. If the Chair of the HSMB informs the parties that the question is not relevant, the Chair will explain the decision to exclude a question as not relevant. Questions, even if relevant, may be excluded if in violation of the provisions in Section XVIII.B. Additionally, repetition of the same question may be deemed irrelevant.

For hearings involving complaints of non-Title IX sexual misconduct against students, 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 XVIII.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 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 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 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.

For complaints of Title IX sexual harassment, if the HSMB determines that the conduct does not constitute Title IX sexual harassment, the HSMB will make a determination as to whether the allegations constitute non-Title IX sexual misconduct. For purposes of clarification, if the HSMB determines after a hearing that Title IX does not apply, but that the alleged conduct violates other provisions of this policy, the HSMB will find the respondent responsible for such violation.

#### 4. Imposition of Sanction and Remedies

If the respondent is found "Responsible," the HSMB hearing panel 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 will review these statements only if the HSMB hearing panel finds that the respondent is responsible for one or more violations of this policy.

The HSMB hearing panel shall determine the appropriate sanction (or combination of sanctions) in accordance with the Sanction Guideline Matrix. 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 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 Coordinator, in consultation with others as necessary, will determine any appropriate additional remedies. Examples of potential remedies are provided in Section X, 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. Sanction Guideline Matrix for Complaints Against Students

In cases involving nonconsensual sexual penetration as defined in Section V, including both Title IX sexual harassment involving nonconsensual sexual penetration and non-Title IX sexual misconduct involving nonconsensual sexual penetration, there is a mandatory sanction of dismissal if the HSMB hearing panel determines responsibility beyond a reasonable doubt. If the HSMB hearing panel determines responsibility by preponderance of the evidence standard of proof, the HSMB hearing panel may, but is not required to, dismiss after considering the factors set forth above.

Sanction Guideline Matrix

<b>Prohibited Behavior</b>	<b>Title IX Sexual Harassment involving Nonconsensual Sexual Penetration or Non-Title IX Sexual Misconduct involving Nonconsensual Sexual Penetration (if found responsible beyond a reasonable doubt)</b>
<b>Range of Sanctions</b>	Dismissal (Mandatory)

**Prohibited Behavior**      **Title IX Sexual Harassment involving Nonconsensual Sexual Penetration or Non-Title IX Sexual Misconduct involving Nonconsensual Sexual Penetration (if found responsible by preponderance of the evidence); other Title IX Sexual Harassment and Non-Title IX Sexual Misconduct; Retaliation**

**Range of Sanctions**      Dismissal; Suspension; Probation; 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 damage to property); On Campus Residential Relocation; Changing Academic Schedule; trespassing respondent from the University

## b. Sanction Guidelines for Complaints Against Non-Students

If the respondent is an employee, the potential sanctions may include:

- Verbal or written warning;
- Requirement to utilize the Employee Assistance Program or other mandatory conditions, which may include training, or some other professional development;
- A no contact directive;
- Loss of privilege;
- 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.

If the respondent is a non-employee, the potential sanctions may 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 a tenured or tenure-line member of the faculty is found responsible and the HSMB determines that removal is the appropriate sanction, the matter will proceed in accordance with the Faculty Dismissal Proceedings set forth in the Faculty Handbook where applicable.

## 5. Notice of Outcome

Within three (3) calendar days of the decision, the Chair of the HSMB shall simultaneously provide to the parties a copy of the written report of the HSMB hearing panel decision.

The written report will note whether remedies will be provided to the complainant, but the specific remedies will not be shared with the respondent unless needed to be disclosed to effectively implement the remedy.

## 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 VII. Appeals must be submitted to the 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 Coordinator, an Appeal Panel will be appointed to review the matter by the Chair of the Appeal Panel.

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 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 may decide the case based solely upon the written appeal and other documents or evidence it reviews, or the Appeal Panel 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 Coordinator; (4) the investigator(s), and/or (5) the original Chair of the HSMB. In seeking additional information, the Appeal Panel may, but is not required to, hold a hearing. The Appeal Panel will defer to decisions of the HSMB hearing panel unless one or more of the appeal bases are satisfied.

The Appeal Panel 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 may recommend that a new HSMB hearing panel 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 within fifteen (15) calendar days from the submission of a written request for appeal.

## **XV. 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.

### **A. Process Upon Receipt of Formal Complaint**

Upon receipt of a formal complaint of non-Title IX sexual misconduct against an employee or other nonstudent, the relevant Co-Chair will promptly (within two (2) business days after being provided the complaint, if practicable) 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 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).

## 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 Advisors (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 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 VII.

## 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 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. Note: see Section XV.M below regarding participation of Executive Director of Human Resources/Assistant Title IX Coordinator for Employment when s/he has had any substantive role in efforts to informally resolve the complaint or the formal complaint process.

## G. IRP Review

The IRP will review the investigation report and the related record. In most cases, absent unusual circumstances, the IRP review should be completed within ten (10)



business days of the date the IRP members receive the record from the Co-Chair.

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. 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.

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 an IRP 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 X). The 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 IRP report in the following manner: the findings on the allegations of a policy violation will be provided to each party; the IRP-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) or where required by federal law to be disclosed to the complainant in the case of certain criminal sexual offenses covered by the Clery Act.

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 IRP's decision on the appealed aspect(s) of the decision lack a reasonable basis, and must be filed with the Co-Chair who issued the original decision within five (5) business days of receipt of that decision. The Appeal Panel's review will then be conducted as soon as possible. In most cases, absent unusual circumstances, the Appeal Panel review should be completed within ten (10) business days of the date the panel members receive the record from the Co-Chair.

The Appeal Panel 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 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 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 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 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 Panel 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 Panel's 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 or unless required by federal law to be disclosed to the complainant in the case of certain criminal sexual offenses covered by the Clery Act. The Co-Chair's decision on such follow up actions is final.

If the Appeal Panel 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 Panel 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 or unless required by federal law to be disclosed to the complainant in the case of certain criminal sexual offenses covered by the Clery Act. 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 or required to be disclosed to the complainant in cases of certain sexual offenses) 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 concurs with a violation finding but finds a sanction is without reasonable basis, the Appeal Panel should first consult the appropriate Co-Chair to review the sanction. If no consensus decision can be reached, both the Appeal Panel 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's decision on the sanction(s) and will also advise the complainant when the sanction involves the complainant or when required by federal law in the case of certain criminal sexual offenses covered by the Clery Act. The President'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 or unless required by federal law to be

disclosed to the Complainant in the case of certain criminal sexual offenses covered by the Clery Act.

## J. Formal Complaint by or against a Co-Chair

If one of the Co-Chairs is the respondent or complainant, the President 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").

## K. Complaint against the President and/or a Trustee

If the respondent is the President or a member of the Board of Trustees, a complaint must be filed directly with the Audit Subcommittee by delivery of a sealed written complaint to the Secretary of the University, Washington Hall 203, labeled "Complaint to the Audit Subcommittee under the Interim Sexual Discrimination and Misconduct Policy." The Secretary of the University will deliver the sealed written complaint intact to the Chair of the Audit Subcommittee and the Audit Subcommittee will handle or direct all further proceedings.

## L. Involvement of Assistant Title IX Coordinator for Employment in Formal Complaints

The Assistant Title IX Coordinator for Employment will be available to serve as a resource for the Co-Chairs, the investigator(s), the DPAs, and/or the parties to a formal complaint, in order to address issues that arise during the complaint process. In the event that the Assistant Title IX Coordinator for Employment has had a substantive role in informal complaint resolution efforts prior to the initiation of the formal complaint, or acts as a resource beyond the resolution of purely procedural questions during the formal complaint process, the Assistant Title IX Coordinator will be disqualified from serving on any Investigation Review Panel or Appeal Panel in that case thereafter.

## XVI. Emergency Removal of Respondent

At any point after a report of sexual misconduct has been made, the Title IX Coordinator has the discretion to request that an individualized safety and risk analysis be conducted to determine whether a respondent poses an immediate threat to the physical health or safety of any student or other individual arising from sexual

misconduct allegations. The individualized safety and risk assessment will be conducted by the University's Student Threat Assessment and Response Team for student respondents and by the Director of Human Resources in conjunction with other University personnel, as appropriate, for non-student respondents. If, after the individualized safety and risk assessment, it is determined that the respondent poses an immediate threat to the physical health or safety of a student or another individual and such threat justifies removal, the respondent may be removed from one or more University programs or activities, including being placed on administrative leave of absence. Emergency removal under this Section assumes no determination of responsibility.

During an emergency removal, a respondent may be denied access to University housing, and/or the University's campus or programs. This restriction may include classes, office space, and/or all other University activities or privileges for which the respondent might otherwise be eligible.

At the discretion of the Title IX Coordinator, and with the approval of and in collaboration with the appropriate Dean(s), instructors, administrators, or supervisors, alternative coursework options and/or working arrangements may be pursued to ensure as minimal an impact as possible on the respondent.

Upon removal, a student or faculty respondent may challenge the removal decision by submitting a written appeal to the Provost. Staff and other non-employee respondents may challenge a removal decision by submitting a written appeal to the Vice President for Finance. All appeals must be delivered to the appropriate administrator within three (3) business days of receipt of the removal decision. The written appeal must state specifically why the respondent believes the removal decision is not warranted under the circumstances. The removal will remain in effect during the appeal.

After reviewing the written appeal, the Provost or Vice President for Finance may meet with the respondent and consult with the appropriate University officials as they deem appropriate, before reaching a decision. The decision of the Provost or the Vice President for Finance is final.

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.

## XVII. Review of Timelines for Resolution Processes

The University will use its best efforts to resolve all formal complaints of sexual misconduct promptly according to the timelines in this policy while balancing principles of thoroughness and fundamental fairness with promptness. Circumstances may arise that require the extension of time frames. Such circumstances may include, but are not limited to, the complexity of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening school break or vacation, the need for accommodation of disabilities, or other unforeseen circumstances. If the investigation and resolution exceed any of these time frames, the University will notify all parties in writing of the reason for the delay. If requested, all parties involved are entitled to periodic status updates on the progress of the formal complaint and/or resolution process.

### A. Informal Resolution

If informal resolution is being used, it will typically be completed within forty-five (45) calendar days of the beginning of informal resolution.

### B. Resolution Process for Formal Complaints of Title IX Sexual Harassment and Non-Title IX Sexual Misconduct Against Students

In general, a complainant and respondent can expect that the resolution process for formal complaints of Title IX sexual harassment or non-Title IX sexual misconduct against students will proceed according to the following time frames:

- Within thirty (30) calendar days after a formal complaint is filed, the investigator(s) will provide to the parties all evidence obtained related to the allegations.
- The parties will have ten (10) calendar days to submit a written response to the evidence.
- Upon completion of the ten (10) day review period, the investigator(s) will draft and provide the investigation report to the parties and Chair of the HSMB within ten (10) calendar days.
- The parties will have ten (10) calendar days to submit a written response to the investigation report.
- The hearing will be held within twenty (20) calendar days after the submission of the investigation report to the parties.
- Notice of outcome will be provided within three (3) calendar days of the HSMB hearing panel decision.

- Upon receipt of the HSMB hearing panel decision, the parties have three (3) calendar days to submit a written request for an appeal.
- If there is a request for appeal, the parties will have three (3) calendar days to respond to the appeal.
- The appeal will be decided within fifteen (15) calendar days from the time of the request for appeal.

## C. Resolution Process for Non-Title IX Complaints Against Employees and Other Nonstudents

In general, a complainant and respondent can expect that the resolution process for formal complaints of non-Title IX sexual misconduct against employees or other nonstudents will proceed according to these time frames:

- The respondent may submit a written statement to the Co-Chair in response to the formal complaint within five (5) business days after the Co-Chair provided the respondent with written notice of allegations.
- The investigation should be completed within thirty (30) business days after the investigator receives the formal complaint.
- The parties will have five (5) business days after receipt of the investigation report to prepare and submit a written response to the Co-Chair.
- If the IRP decides the case based on the written record, the IRP will review the investigation report and related record within ten (10) business days of the date on which the IRP receives the investigation report and related record from the Co-Chair. If the IRP's review process necessitates providing the parties the ability to respond and comment, the review process will be extended for that time period (generally two (2) business days).
- The IRP report will be provided within two (2) business days of the IRP decision.
- Upon receipt of the IRP report, the parties have five (5) calendar days to submit a written request for an appeal.
- The appeal will be decided within ten (10) calendar days from the date the Appeal Panel receives the record from the Co-Chair.

## XVIII. 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;
- During any cross-examination permitted under the Title IX resolution process, questions only are permitted; an Advisor of Choice may not give any statements, speeches, or objections to relevance decisions;
- 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. Prior Sexual History

In general, questions and evidence about the sexual predisposition or prior sexual behavior of the complainant are not relevant and will not be admitted as evidence during an investigation and/or hearing, except under the following circumstances: (1) where the sexual behavior is used to show that someone other than the respondent committed the conduct alleged by the complainant; or (2) where if the questions and evidence concern a specific incident of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. As otherwise noted in this policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent.

### 2. 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.Q) 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.

### 3. 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

For complaints of non-Title IX sexual misconduct, 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 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. Transcript Notations

Pursuant to and as required by Virginia law, for each student who has been suspended for, permanently dismissed for, or withdraws from the University while under investigation for an offense involving sexual violence (defined as physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent), the University will make or cause to be made a prominent notation on the academic transcript of each student. In cases of suspension and dismissal this transcript notation will read: "[Suspended or Dismissed] for a violation of W&L's set of standards." In cases of withdrawal, the notation will read: "Withdrew while under investigation for a violation of W&L's set of standards. This withdrawal as noted does not constitute a finding or admission of responsibility on the part of the student."

The University shall remove from a student's academic transcript any notation placed on such transcript due to a student's suspension if the student (1) completed the term of the suspension and (2) the student is eligible to apply for reinstatement.

The University shall remove from a student's academic transcript any notation placed on such transcript due to a student's dismissal after a period of three (3) years and good cause shown. Good cause will be determined by the Title IX Coordinator.

## E. Student Advisory Group

The Student Advisory Group is made up of up to six (6) student advisors (generally, four (4) undergraduate students and two (2) law students) who are appointed by the Executive Committee to serve one (1) year terms. In appointing the members of the Student Advisory Group, the Executive Committee will make every effort to create diverse representation.

The role of the Student Advisory Group is to aid the Title IX Coordinator and HSMB in understanding issues of student social dynamics. It will assist in training the HSMB and Appeal Panel by advising on student social dynamics and by advising the Title IX Coordinator on issues related to sexual misconduct, including policy training and campus climate. The Student Advisory Group will also review this policy and will have an opportunity to recommend changes.

## F. 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.

## XIX. Record Keeping

The Title IX Coordinator will retain records of all reports of misconduct under this policy. These records will include, but are not limited to, records of reports, materials from all resolution processes, informal resolution results and related documents, and information about all supportive measures provided. Such records will be maintained for at least a period of seven (7) years.

Pursuant to Virginia law, the Title IX Coordinator and the Public Safety representative of the University's Review Committee will also retain independent records related to the Review Committee's considerations upon a report of sexual violence.

Affirmative findings of responsibility in matters resolved through an HSMB hearing or IRO review process are part of a student's conduct record or employee personnel file. Such records will be used in reviewing any further conduct or in developing sanctions. In general, the University will maintain records for the duration of the respondent's relationship with the University, and may retain them for no less than seven (7) years following the respondent's departure from the University. If the HSMB hearing panel or IRP does not find the respondent responsible, the student's conduct file or employee personnel file will reflect the finding.

## XX. Policy Review

The University, through a working group that may include the Title IX Coordinator, members of the Office of General Counsel, members of the Student Advisory Group, and the Vice President of Student Affairs and Dean of Students, will review and update this policy, as appropriate, by October 31 of each year. The University will evaluate, among other things, any changes in legal requirements and existing University resources. The President will certify to the State Council of Higher Education for Virginia that this policy has been reviewed and updated, as appropriate, in accordance with all applicable federal and state laws.

<sup>1</sup>The differences in procedures applicable to the resolution process for formal complaints of Title IX sexual harassment and formal complaints of non-Title IX sexual misconduct against students are explained in Section XIV.

<sup>2</sup>Throughout this policy, if a pronoun is necessary, "they", "them" and "their" are used intentionally to be inclusive of all genders

- <sup>3</sup>In Virginia, marriage between an ancestor and descendant, between siblings, and between an uncle or an aunt and a nephew or niece, whether the relationship is by the half or the whole blood, is prohibited.
- <sup>4</sup>In Virginia, the statutory age of consent is 18, but the statutory age of consent may be different based on the geographic location of where the sexual intercourse occurred.
- <sup>5</sup>it is understood that the violence inflicted upon the complainant must occur without the complainant's consent.
- <sup>6</sup>Employment titles may change periodically. In the event of a change in title, the individuals fulfilling these functions will be considered Mandatory Reporters despite the title change.

## Revision History

July 1, 2015 -- Revised.

August 12, 2015 -- Revised (Titles of IROs)

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August 14, 2020 -- Revised.

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