

Western Illinois University

Discrimination, Harassment, and Sexual Misconduct Policy

FOR ALL FACULTY, STUDENTS, EMPLOYEES, AND THIRD-PARTIES

POLICY AND PROCEDURES
Approved/In Effect Beginning August 14, 2020

Approved 8/06/20
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POLICY: Equal Opportunity, Harassment, and Nondiscrimination

1. Applicable Law

Western Illinois University (“WIU” or the “University”) adheres to all federal and state civil rights laws and regulations prohibiting discrimination in public institutions of higher education in Illinois.

2. Policy on Nondiscrimination

Western Illinois University strives to provide an educational and working environment that is free from discrimination and harassment for faculty, staff, and students. WIU policy prohibits discrimination and harassment on the basis of sex, race, color, sexual orientation, gender identity, gender expression, religion, age, marital status, national origin, disability, genetic information, veteran status, and any other classes protected by state or federal law. This policy covers nondiscrimination in both employment and access to educational opportunities.

3. Glossary

- *Advisor* means a person chosen by a party in the resolution process or appointed by WIU to accompany the party to meetings, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute a violation of this policy, including harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint or formal complaint* means a document filed and/or signed by a Complainant or signed by the Director of the Office of Equal Opportunity and Access (hereafter referred to as the “OEOA Coordinator”) alleging violation of this policy, including harassment or discrimination based on a protected class or retaliation and requesting that WIU investigate the allegation.
- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when WIU is in normal operation.
- *Decision-maker* refers to those officials who have decision-making and sanctioning authority within WIU’s Formal Grievance process.
- *Education program or activity* means locations, events, or circumstances where WIU exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by WIU.
- *Final Determination*: A conclusion by the preponderance of the evidence that the alleged conduct occurred and whether it did or did not violate the policy.

- *Finding*: A conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged.
- *Grievance Process* means a method of formal or informal resolution designated by WIU to address conduct that falls within the policies included below. For *Title IX Sexual Harassment*, as defined below, the grievance process complies with the requirements of the 2020 Title IX regulations, at 34 CFR Parts 106.30, 106.44, and 106.45.
- *Hearing Decision-maker* refers to officials who participate in a hearing and have decision-making and sanctioning authority within WIU's Formal Grievance process.
- *Investigator* means the person or persons charged by WIU with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of WIU who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the OEOA Coordinator.¹
- *Notice* means that an employee, student, or third-party informs the OEOA Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means an employee of WIU explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of WIU. Any WIU employee with supervisory duties is an OWA.
- *Party or parties* refers to the Complainant(s), the Respondent(s), or the Complainant(s) and the Respondent(s) collectively.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence of misconduct under this policy, and restore access to WIU's educational programs and activities.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute a violation of this policy, including harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Resolution* means the result of an Informal or formal Grievance Process.
- *Sanction* means a consequence imposed by WIU on a Respondent who is found to have violated this policy.

¹ Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

4. Rationale for Policy

WIU is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, WIU has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation.

5. Applicable Scope

The core purpose of this policy is the prohibition of all forms of discrimination. When an alleged violation of this policy is reported, the allegations are subject to resolution using WIU's "Process A" or "Process B," as determined by the OEOA Coordinator, and as detailed below.

When the Respondent is a member of the WIU community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the WIU community (except in cases of alleged *Title IX Sexual Harassment*, as discussed below). This community includes, but is not limited to, students,² student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

6. OEOA Coordinator

The OEOA Coordinator serves as serves as the Director of the Office of Equal Opportunity and Access ("OEOA"), as well as the Title IX Coordinator, Age Discrimination Act Coordinator, and ADA/Section 504 Coordinator. The OEOA Coordinator oversees implementation of this WIU's policy. The OEOA Coordinator has the primary responsibility for coordinating WIU's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy. References to "Coordinator," throughout this policy and accompanying procedures may encompass a designee of the Coordinator for specific tasks.

7. Bias and Conflict-of-Interest

The OEOA Coordinator acts with independence and authority free from bias and conflicts of interest. The OEOA Coordinator oversees all resolutions under this policy and these procedures. All WIU officials involved in the resolution and adjudication of allegations under this policy are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally. These officials include the OEOA Coordinator, any deputy coordinators, the investigator(s), the hearing officer, the informal resolution facilitator, the appeal decision-maker, and any other individual designated by WIU to participate in the resolution and adjudication process.

² For the purpose of this policy, WIU defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with WIU.

To raise a concern involving bias or conflict of interest by the OEOA Coordinator, contact the WIU President at President-g@wiu.edu or designee. Concerns of bias or a potential conflict of interest by any other WIU official involved in the resolution and adjudication process OEOA member should be raised with the Coordinator.

Reports of misconduct or discrimination committed by the OEOA Coordinator should be reported to the WIU President (President-g@wiu.edu) or designee. Reports of misconduct or discrimination committed by any other WIU official involved in the resolution and adjudication process should be reported to the OEOA Coordinator.

8. Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Stephanie Kinkaid
OEOA Director, Title IX Coordinator, ADA/Section 504 Coordinator
Office of Equal Opportunity and Access
1 University Circle, Macomb, IL
Sherman 312
(309) 298-1977
Email: sm-kinkaid@wiu.edu
Web: http://www.wiu.edu/equal_opportunity_and_access/

Tami McCoy
Deputy Title IX Coordinator
OEOA Coordinator, Assistant Title IX Coordinator, Assistant ADA/Section 504 Coordinator
Office of Equal Opportunity and Access
1 University Circle, Macomb, IL Sherman 312
(309) 298-1977
Email: TitleIX@wiu.edu

WIU has also classified most employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Officials with Authority are employees who will report all information and reports of harassment, discrimination, or misconduct to the Office of Equal Opportunity and Access.

OWAs are:

Department Chairs

Deans

Assistant Directors

Directors

Provost

Associate Provost

Assistant Vice Presidents

Vice Presidents

President

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

[Equal Employment Opportunity Commission](http://www.eeoc.gov) (EEOC) ³

Contact: <http://www.eeoc.gov/contact/>

9. Notice and Complaints of Discrimination, Harassment, and/or Retaliation

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- 1) File a complaint with, or give verbal notice to, the OEOA. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the OEOA Coordinator or Deputy Title IX Coordinator. (Contact information listed above.)
- 2) Report online, using the reporting form posted at:
http://www.wiu.edu/equal_opportunity_and_access/

Anonymous reports are accepted and can give rise to a need to investigate. WIU tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as WIU respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows WIU to discuss and/or provide supportive measures.

- 3) Report by calling Office of Public Safety (OPS).
911 for emergencies on campus
309-298-1949 for non-emergencies

A complaint may be filed with the OEOA Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through the online portal provided for this purpose by WIU) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint.

³ OCR and the EEOC have jurisdiction over Title IX employment claims.

If notice is submitted in a form that does not meet this standard, the OEOA Coordinator will contact the Complainant to understand what the individual wants to do and to ensure that that the complainant is filed correctly.

10. Supportive Measures

WIU will offer and implement appropriate and reasonable supportive measures to the parties upon receiving notice or a complaint of alleged harassment, discrimination, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to WIU's education program or activity, including measures designed to protect the safety of all parties or WIU's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The OEOA Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, WIU will inform the Complainant, in writing, that he or she may file a complaint with WIU either at that time or in the future, if they have not done so already. The OEOA Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

WIU will maintain the privacy of the supportive measures, provided that privacy does not impair WIU's ability to provide the supportive measures. WIU will act to ensure as minimal an impact on the parties as possible. WIU will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the OEOA Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

11. Emergency Removal

WIU can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the OEOA Coordinator in conjunction with WIU's Campus Threat Assessment Team, using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the Respondent will be given notice of the action and the option to request to meet with the OEOA Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the OEOA Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The OEOA Coordinator has sole discretion under this policy to implement or revoke an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

WIU will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the OEOA Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of WIU facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing paid or unpaid administrative leave for an employee, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the OEOA Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the student parties.

12. Promptness

All allegations are acted upon promptly by WIU once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but WIU will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in WIU procedures will be delayed, WIU will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

13. Privacy

Every effort is made by WIU to preserve the privacy of reports and complaints.⁴ WIU will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

WIU reserves the right to designate which WIU officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to FERPA.

Only a small group of officials, if they are deemed to have a need to know, will be told about the complaint, which could include, but is not limited to: WIU Police and the **Threat Assessment Team**. Information will be shared as necessary with the parties, Investigators, Hearing Panel members/Decision-makers, witnesses, and any other individuals designated by WIU to participate in the process. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

Employees: Several grant issuing organizations require the WIU to disclose any open investigations or disciplinary findings related to Title IX and/or other forms of discrimination during the grant application process. Consult Office of Sponsored Research and Programs regarding any grant terms for specific disclosures required.

Confidentiality and mandated reporting are addressed more specifically [below](#).

14. Jurisdiction of WIU

The following description of WIU's jurisdiction does not apply to allegations or complaints of *Title IX Sexual Harassment*, which are discussed below.

⁴ For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of WIU employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in WIU's **FERPA policy**. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. WIU has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources section.. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information.. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

This policy applies to the education programs and activities of WIU, to conduct that takes place on the campus or on property owned or controlled by WIU, at WIU-sponsored events, or in buildings owned or controlled by recognized WIU student organizations.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to WIU's educational program. WIU may also extend jurisdiction to off-campus and/or to online conduct when the OEOA Coordinator determines that the conduct affects a substantial WIU interest.

Regardless of where the conduct occurred, WIU will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity.

When the Respondent is enrolled in or employed by another institution, the OEOA Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Non-University visitors, guests, patrons, independent contractors, vendors, or clients who violate this policy will be subject to action in accordance with contractual agreements.

15. Time Limits on Reporting

There is no time limitation on providing notice/complaints to the OEOA Coordinator. However, if the Respondent is no longer subject to WIU's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible. Acting on notice/complaints significantly impacted by the passage of time) is at the discretion of the OEOA Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate. When notice/complaint is affected by significant time delay, WIU will apply the policy and procedures in place at the time of the alleged misconduct.

16. Online Harassment and Misconduct

The policies of WIU are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on WIU's education program and activities or use of WIU networks, technology, or equipment.

Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of WIU's control (e.g., not on Recipient networks, websites, or between Recipient email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption.

Otherwise, such communications are considered speech protected by the First Amendment.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the Recipient only when such speech is made in an employee's official or work-related capacity.

17. Policy on Non Title IX Discrimination and Harassment

Discrimination and harassment are prohibited under this policy on the basis of age, color, disability, family status, genetic information, height, national origin, pregnancy, race, religion, or sex, except in the event of a bona fide occupational qualification. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of WIU policy, though supportive measures may be offered to those impacted.

Acts of discrimination or harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

a. Discrimination

Discrimination includes actions that deprive or limit access to education, employment, benefits, or other opportunities and/or treat an individual differently on the basis of actual or perceived membership in a class protected by policy or law (as listed in the categories noted in this policy).

b. Harassment

With the exception of *Title IX Sexual Harassment* as defined below in Section 17.c., harassment under this section of the policy includes all forms of sexual, racial and other harassment on the basis of actual or perceived membership in a class protected by policy or law (as listed in the categories noted in this policy, except for *Title IX Sexual Harassment* as defined below in Section 17.c. Harassment under this section is defined as conduct based on a specific protected category that satisfies one or more of the following:

- 1) Quid Pro Quo:
 - a. an employee of WIU,
 - b. conditions the provision of an aid, benefit, or service of WIU,
 - c. on an individual's participation in unwelcome sexual conduct and/or

- 2) Hostile Environment
 - a. unwelcome conduct,
 - b. taken against a person on the basis of a protected category, and
 - c. determined to be so severe, OR
 - d. pervasive, OR
 - e. persistent,
 - f. that it effectively interferes with or denies an individual's ability to participate in or benefit from WIU's education program or activity, and/or

- 3) Sexual assault, domestic violence, dating violence or stalking, that is not defined as Title IX in Section 17.c.

Harassment may be in the form of verbal, written, graphic, or physical conduct.

c. Title IX Sexual Harassment

WIU has adopted the following definition of “*Title IX Sexual Harassment*” in order to comply with the requirements mandated by the 2020 Title IX Regulations, 34 CFR 106.30. Sexual harassment that that does not meet the definition set forth in this section may be addressed under Section 17.b., Harassment.

Title IX Sexual Harassment is defined as conduct on the basis of sex that satisfies one or more of the following:

- 1) Quid Pro Quo:
 - a. an employee of WIU,
 - b. conditions the provision of an aid, benefit, or service of WIU,
 - c. on an individual’s participation in unwelcome sexual conduct; and/or

- 2) Sexual Harassment:
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, AND
 - d. pervasive, AND
 - e. objectively offensive,
 - f. that it effectively denies a person equal access to WIU’s education program or activity.

- 3) Sexual assault, defined as:
 - a) Sex Offenses, Forcible:
 - i) Any sexual act directed against another person,
 - ii) without the consent of the Complainant,
 - iii) including instances in which the Complainant is incapable of giving consent.
 - b) Rape:
 - i) Penetration,
 - ii) Forcibly,
 - iii) no matter how slight,
 - iv) of the vagina or anus with any body part or object, or
 - v) oral penetration by a sex organ of another person,
 - vi) without the consent of the Complainant.
 - c) Sodomy:
 - i) Oral or anal sexual intercourse with another person,
 - ii) forcibly,
 - iii) and/or without the consent of the Complainant, or
 - iv) not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age⁵ or because of temporary or permanent mental or physical incapacity.
 - d) Sexual Assault with an Object:
 - i) The use of an object or instrument to unlawfully penetrate,
 - ii) however slightly,
 - iii) the genital or anal opening of the body of another person,

⁵ 17 in the State of Illinois per state law.

- iv) forcibly,
 - v) and/or against that person's will (non-consensually),
 - vi) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- e) Fondling:
- i) The touching of the private body parts of another person (including genitalia, buttocks, groin, breasts),
 - ii) for the purpose of sexual gratification,
 - iii) forcibly,
 - iv) and/or against that person's will (non-consensually),
 - v) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- f) Other Sex Offenses:
- i) Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,
 - 3) within the degrees wherein marriage is prohibited by state law.
 - ii) Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) with a person who is under the statutory age of consent of 17.

4) Dating Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.

5) Domestic Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Illinois, or

- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Illinois.

*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6) Stalking, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

d. Consensual Relations

It is in the interest of the University to provide clear direction and educational opportunities to the University community regarding the professional risks associated with consensual romantic and/or sexual relationships where a definite power differential exists between the parties. These relationships are of concern for two primary reasons:

Conflict of Interest

Conflicts of interest may arise in connection with consensual romantic and/or sexual relationships between faculty or other instructional staff and students, or between supervisors and subordinates. University policy and more general ethical principles preclude individuals from evaluating the work or academic performance of others with whom they have intimate familial relationships, or from making hiring, salary, or similar financial decisions concerning such persons. The same principles apply to consensual romantic and/or sexual relationships, and require, at a minimum, that appropriate arrangements be made for objective decision-making with regard to the student, subordinate, or prospective employee.

Abuse of Power Differential

Although conflict of interest issues can be resolved, in a consensual romantic and/or sexual relationship involving power differential, the potential for serious consequences remains. Individuals entering into such relationships must recognize that:

- A. reasons for entering such a relationship may be a function of the power differential;
- B. even in a seemingly consensual relationship where power differentials exists, there are limited after-the-fact defenses against charges of sexual harassment; and,
- C. the individual with the power in the relationship will bear the burden of accountability.
- D. such a relationship, whether in a class or work situation, may affect the educational or employment environment for others by creating an appearance of improper, unprofessional, or discriminatory conduct.

Breach of Professional Obligation

A sexual relationship that does not constitute sexual harassment may lead to a breach of professional obligations. A breach of professional obligations, such as basing a decision that affects the evaluation, employment conditions, instruction, and/or academic status of another individual on illegitimate criteria, may result in discipline or sanctioning in accordance with the relevant collective bargaining agreements or University policies.

e. **Force, Coercion, Consent, and Incapacitation**

As used in the offenses above, the following definitions and understandings apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent: Consent is the relevant standard that will be applied to determine whether consent was present is whether a sober, reasonable person in the same position should have known the other party could not consent to the sexual activity. Consent to engage in sexual activity must be clear, coherent, ongoing, and willing. This means that silence or lack of verbal/physical resistance is not a “yes”.

Consent is not present when:

- The person is incapacitated voluntarily or involuntarily due to a physical condition including, but not limited to, the use or influence of drugs or alcohol or being unconscious.
- The person is underage.
- The person has a mental disability that impairs the ability to provide consent.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

f. Policy on Disability Discrimination and Accommodation

WIU is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by WIU, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The OEOA Director been designated as WIU's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status and/or accommodations will be addressed using the procedures below.

1. Students with Disabilities

WIU is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of WIU.

All accommodations are made on an individualized basis. A student requesting any accommodation

should first contact the Director of the Student Disability Resource Center, who coordinates services for students with disabilities.

The Director of the Student Disability Resource Center reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s).

2. Employees with Disabilities

Pursuant to the ADA, WIU will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to WIU.

An employee with a disability is responsible for submitting a request for an accommodation to the ADA/504 OEOA Coordinator and providing necessary documentation. The ADA/504 OEOA Coordinator will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

g. OTHER ACTIONS PROHIBITED BY THIS POLICY

WIU additionally prohibits the following additional offenses as forms of discrimination when the act is based upon the Complainant's actual or perceived membership in a protected class. These offenses do not include speech of conduct otherwise protected by the First Amendment. **WIU employees may be subject to discipline for disregarding, failing to investigate adequately, or delaying investigation of allegations of harassment, when responsibility for reporting and/or investigating harassment charges comprises part of one's supervisory duties.**

- Sexual Exploitation, defined as: taking non-consensual or abusive sexual advantage of another person for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy.
- Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the WIU community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity.
- Hate speech as defined as: public speech, written language, or graphic material that encourages or incites violence or physical threats of harm against someone based on their status in a protected class such as race, religion, disability, veteran status, age, or gender.

This language :

- has the purpose or effect of creating an intimidating, hostile, or offensive environment;
- has the purpose or effect of unreasonably interfering with an individual's work, study, or participation in University activities; or
- otherwise adversely affects an individual's opportunities.

Behaviors in this category include:

- epithets; slurs; negative stereotyping; or threatening, intimidating, or hostile acts that relate to sex, race, color, sexual orientation, gender identity, gender expression, religion, age, marital status, national origin, disability, genetic information, and veteran status.
- Bullying, defined as:
 - Repeated and/or severe
 - Aggressive behavior
 - Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally.

This policy also prohibits making deliberate false accusations of discrimination or harassment v. In such instances, the complainant will be subject to disciplinary action. However, failure to prove a claim of discrimination or harassment does not constitute proof of a false and/or malicious accusation.

Violation of any other WIU policies may constitute an offense under this Policy when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Offenses range from reprimand through expulsion/termination.

18. Retaliation

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this policy.

Acts of alleged retaliation should be reported immediately to the OEOA Coordinator and will be promptly investigated. WIU is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for WIU or any member of WIU's community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual

has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Charges against an individual for code of conduct violations that do not involve discrimination or harassment but arise out of the same facts or circumstances as a report or complaint of discrimination or sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitute retaliation. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

19. Mandated Reporting

All WIU employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared. If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will pass reports to the OEOA Coordinator (and/or police, if desired by the Complainant) within 24 hours, who will take action when an incident is reported to them.

The following sections describe the reporting options at WIU for a Complainant or third-party (parties):

a. Confidential Resources

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed professional counselors and staff
- On-campus Health Center providers and staff
- On-campus Campus Ministries staff
- Off-campus (non-employees):
 - Licensed professional counselors and other medical providers
 - Local rape crisis counselors
 - Domestic violence resources
 - Local or state assistance agencies
 - Clergy/Chaplains
 - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

WIU's University Counseling Center provides free counseling services for degree-seeking students who are enrolled full-time, including availability to manage crisis situations during regular business hours. For crises that arise outside regular business hours students can access Victim Advocates 24/7 at 309.837.5555.

The University Counselor Center is available to help free of charge and may be consulted during normal business hours.

b. Mandated Reporters and Formal Notice/Complaints

All employees of WIU (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the OEOA Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the OEOA Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from WIU.

Supportive measures may be offered as the result of such disclosures without formal WIU action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of WIU policy and can be subject to disciplinary action for failure to comply.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

All employees on campus are required to report any allegations or suspicions of abuse or violence toward a minor (in Illinois, under the age of 17) to the OEOA Coordinator and OPS immediately.

20. Federal Statistical Reporting Obligations

Mandated Reporters are also deemed Campus Security Authorities – meaning they have a duty to report all crimes they are made aware of to Campus Safety for federal statistical reporting purposes, as required by the Clery Act.

All personally identifiable information is kept private, but statistical information must be passed along to Campus Safety regarding the type of incident, the date and its general location for publication in the Annual Security Report and daily campus crime log. Issues of sexual assault

and/or VAWA⁶ based crimes that are reported to the OEOA Coordinator will be shared with Campus Safety by that office.

21. Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, WIU must issue [timely warnings](#) for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

WIU will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

22. When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the OEOA Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The OEOA Coordinator has ultimate discretion over whether WIU proceeds when the Complainant does not wish to do so, and the OEOA Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The OEOA Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires WIU to pursue formal action to protect the community.

The OEOA Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and WIU's ability to pursue a Formal Grievance Process fairly and effectively.

When the OEOA Coordinator executes the written complaint, he or she does not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When WIU proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this policy irrespective of their level of participation.

Note that WIU's ability to remedy and respond to notice may be limited if the Complainant does not want WIU to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing WIU's obligation to protect its community.

⁶ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow WIU to honor that request, WIU will offer supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date.

23. False Allegations and Evidence

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under WIU policy.

24. Amnesty for Complainants and Witnesses

The WIU community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to WIU officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the WIU community that Complainants choose to report misconduct to WIU officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, WIU maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to the Respondent with respect to a Complainant.

Students: Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual misconduct to Campus Safety).

WIU maintains a policy of amnesty for students who offer help to others in need. While in some circumstances policy violations cannot be overlooked, WIU may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

REPORTING

You may report incidents of sexual harassment directly to the OEOA:
Sherman Hall room 312 during office hours
(309)297-1977
titleIX@wiu.edu

Or online [here](#).

ON CAMPUS REPORTING

Office of Public Safety

Mowbray Hall
1 University Circle
Macomb, IL 61455
PublicSafety@wiu.edu

EMERGENCIES: Dial 911

Phone: 309/298-1949

OFF CAMPUS REPORTING

Macomb Police Department
120 S McArthur St,
Macomb, IL 61455, USA
309-833-4505
In an Emergency call 911

CONFIDENTIAL REPORTING

The following resources are for support, and NOT to report a crime or violation to the Title IX Coordinator.

Victim Services:

WIRC VICTIM SERVICES 24-Hour Free and Confidential Crisis Hotline: (309) 837-5555

Domestic Violence Services

- Hancock County: (309) 837-6622
- Henderson County: (309) 837-6622
- McDonough County: (309) 837-6622
- Warren County: (309) 837-6622

Sexual Assault Services

- Fulton County: (309) 333-1934
- Hancock County: (309) 836-2148
- Henderson County: (309) 836-2148
- Knox County (Primary): (309) 331-4716
- Knox County (Secondary): (309) 343-3337

- McDonough County: (309) 836-2148
- Warren County: (309) 836-2148

University Counseling Center

Memorial Hall 1st Floor
1 University Circle
Macomb, IL 61455

Please [call to schedule an appointment](#). Appointments cannot be made through email.

Phone: (309) 298-2453

Fax: (309) 298-3253

Email: ucc@wiu.edu

LOCAL HOSPITAL

McDonough District Hospital
525 East Grant Street
Macomb, Illinois 61455
(309) 833-4101

Additional Resources:

RAINN Sexual Assault Hotline
800.656.HOPE (4673)

Quad Cities Rape/Sexual Assault Counseling Hotline
Serving Mercer, Henry, Rock Island Counties
(309_797-1777

1521 47th Avenue

Moline, IL 61265

<http://www.fameres.org>

GRIEVANCE PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION

WIU will act on any allegation or notice of violation of the policy on Equal Opportunity, Harassment and Nondiscrimination (“the Policy”) that is received by the OEOA Coordinator or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy. WIU will provide a prompt and equitable resolution of complaints filed under this Policy.

Importantly, certain provisions in the procedures described below apply to all allegations of harassment (except *Title IX Sexual Harassment*) or discrimination on the basis of protected class status involving students, staff, faculty members, or third parties, and other provisions apply to allegations of *Title IX Sexual Harassment*, as defined in Section 17.c. (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrator, or faculty members.

These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing or discriminatory conduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student, faculty, and staff handbooks.

University officials, staff and students involved in the grievance process (other than as parties or witnesses) will receive the training required by federal and state law.

1. Notice/Complaint

Upon receipt of a complaint or notice to the OEOA Coordinator of an alleged violation of the Policy, WIU initiates a prompt initial assessment to determine the next steps WIU needs to take. WIU will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to proceed formally;
- 2) An informal resolution; and/or
- 3) A Formal Grievance Process including an investigation and a hearing.

2. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of the Policy, the OEOA Coordinator engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

- If notice is given, the OEOA Coordinator seeks to determine if the person impacted wants to make a formal complaint and will provide information about how to make a formal complaint.
- If they do not wish to file a formal complaint, the OEOA Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the OEOA Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.

- The OEOA Coordinator reaches out to the Complainant to offer supportive measures.

Based on the initial assessment, WIU will initiate one of two responses:

- Informal Resolution
- Formal Resolution

The investigation and the subsequent Formal Resolution determine whether the policy has been violated and, if so, what sanctions if any should be given. If so, WIU will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects.

At any point during the initial assessment or formal investigation, if the OEOA Coordinator determines that the preponderance of the evidence establishes that, even if true, the allegation would not violate the policy, the process will end and the complaint or allegation therein will be dismissed, and the parties will be notified.

The Complainant may request that the OEOA Coordinator review the dismissal determination and/or re-open the investigation. This decision lies in the sole discretion of the OEOA Coordinator, but the request is usually only granted in extraordinary circumstances.

3. Dismissal of Title IX Sexual Harassment Allegations and Complaints

WIU must dismiss a formal complaint or any allegations of *Title IX Sexual Harassment*, therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute *Title IX Sexual Harassment* as defined in the Policy e, even if proved;
- 2) The conduct did not occur in an educational program or activity controlled by WIU (including buildings or property controlled by recognized student organizations), ;
- 3) The conduct did not occur against a person in the United States; or
- 4) At the time of filing a formal complaint, the complainant is not participating in or attempting to participate in the education program or activity of WIU.

WIU may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the OEOA Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by WIU; or
- 3) Specific circumstances prevent WIU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

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

This dismissal decision relating to allegations of *Title IX Sexual Harassment* is appealable by any party under the procedures for appeal below. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

4. Advisors

Each party may choose an Advisor who is eligible to accompany them throughout the process. The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The Advisor can be anyone, including an attorney, but should not be someone who is also a witness in the process. The Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions. Parties whose Advisors are disruptive or who do not abide by WIU policies and procedures may face the loss of that Advisor and/or possible Policy violations.

With the exception of conducting cross examination at a *Title IX Sexual Harassment* hearing, advisors are expected to consult with their advisees without disrupting WIU meetings or interviews. The Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation. Advisors do not represent parties in the process; their role is only to advise.

The parties are expected to inform the Investigators of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired). The parties are expected to provide timely notice to the Investigator(s) and/or the OEOA Coordinator if they change Advisors at any time.

For formal complaints of *Title IX Sexual Harassment*, Advisors are responsible for conducting cross-examination during the hearing. Under the 2020 Title IX regulations, if a party does not have an Advisor for a hearing, WIU will appoint a trained Advisor for the limited purpose of conducting any cross-examination. A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct cross-examination, WIU will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself.

As a public entity, WIU fully respects and accords the Weingarten rights of employees. For parties who are entitled to union representation, WIU will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors. Witnesses are/are not permitted to have union representation or Advisors in grievance process interviews or meetings.

For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>)

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>)
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>]

5. Timeframes

WIU aims to complete all investigations within a sixty (60) to one-hundred-twenty (120) business day time period, which can be extended as necessary for appropriate cause by the OEOA Coordinator, with notice to the parties as appropriate.

WIU strives to complete investigations expeditiously, normally within 10-20 business days, though some investigations take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. WIU will communicate regularly with the parties to update them on the progress and timing of the investigation.

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

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

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

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

6. Ensuring Impartiality

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

The OEOA Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the OEOA Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the OEOA Coordinator, concerns should be raised with the WIU President or designee.

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

WIU operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the preponderance of the evidence.

7. Resolution Options

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with WIU Policy. While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose, but are encouraged to discuss with their Advisors first before doing so.

a. Informal Resolution

Informal Resolution can include three two different approaches:

- When the parties agree to resolve the matter through an mediation, restorative practices, etc.; or
- When the OEOA Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

It is not necessary to pursue Informal Resolution first in order to pursue Formal Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Formal Resolution process. Further, if an Informal Resolution fails after the fact, Formal Resolution may be pursued.

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

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

For formal complaints of *Title IX Sexual Harassment*, informal resolution will not be initiated until a formal complaint has been filed and will not be used in cases involving allegations of sexual harassment of students by employees.

The OEOA Coordinator determines if Informal Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Informal Resolution.

The results of Informal Resolution are not appealable.

b. Formal Resolution

Formal Resolution can be pursued for any behavior that constitutes conduct covered by the Policy at any time during the process. Formal Resolution will be provided in a prompt and equitable manner. Formal Resolution includes a thorough, reliable, and impartial investigation.

If Formal Resolution is initiated, the OEOA Coordinator will provide written notification of the investigation to the parties at an appropriate time during the investigation. Typically, notice is given at least 24 hours in advance of an interview. Advanced notice facilitates the parties' ability to identify and choose an Advisor, if any, to accompany them to the interview.

Notification will include a meaningful summary of the allegations, will be made in writing, and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official WIU records, or emailed to the parties' WIU-issued or designated email account.

For formal complaints of *Title IX Sexual Harassment*, the notification will include the following specific information:

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

Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notification should include the policies allegedly violated, if known at the time. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become clearer.

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

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

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

8. Investigation

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, and to provide evidence and witnesses.

The Investigator(s) typically takes the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with campus partners (e.g., the OEOA Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct
- Assist the OEOA Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their statement, if necessary
- Prepare the initial Notice of Investigation and Allegation on the basis of the initial assessment. The Notice may be amended with any additional or dismissed allegations
- Notice should inform the parties of their right to have the assistance of an Advisor of their choosing
- When formal notice is being given, it should provide the parties with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result
- Give an instruction to the parties to preserve any evidence that is directly related to the allegations
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant individuals and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses
- Complete the investigation promptly
- Provide regular status updates to the parties throughout the investigation

- Write a comprehensive investigation report fairly summarizing the investigation and all evidence
- Provide parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, credibility assessments, and recommended finding(s)
- Provide each party with a full and fair opportunity to respond to the report in writing within five (5) days and incorporate that response into the report
- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses.
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- Share the report with the OEOA Coordinator or legal counsel for review and feedback.
- Provide the final report to the OEOA Coordinator with a recommendation to the Decision-makers on a determination, based on a preponderance of the evidence, whether a policy violation is more likely than not to have occurred.
- Provide the final report to the OEOA Coordinator.
- Recommend to the OEOA Coordinator a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not).
- For formal complaints of *Title IX Sexual Harassment*,
 - Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which WIU does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days.
 - The parties are allowed to fully review all evidence obtained during the investigation.
 - The final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.
 - The OEOA Coordinator will refer the matter for a hearing. The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

9. Determination – non-Title IX Sexual Harassment Complaints

Within two to three days of receiving the Investigator's recommendation, the OEOA Coordinator will designate the Decision-makers. They will review the report and all responses, and then make the final determination on the basis of the preponderance of the evidence.

If the record is incomplete, the OEOA Coordinator and/or Decision-makers may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed.

The recommendation of the investigation should be strongly considered but is not binding on the Decision-Makers. The Decision-makers may consider impact statements from the parties if and when determining appropriate sanction(s), if any.

The OEOA Coordinator then provides the parties with a written Notice of Outcome in a timely manner to include findings, any sanction(s), and a detailed rationale, delivered simultaneously (without undue delay) to the parties.

If the Respondent admits to the violation(s), or is found in violation, the Decision-makers, in consultation with other administrators as appropriate, determines sanction(s) and/or responsive actions, which are promptly implemented in order to effectively to stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

The OEOA Coordinator informs the parties of the determination within two to three business days of the resolution, ideally simultaneously, but without significant time delay between notifications. Notifications are made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official WIU records; or emailed to the parties' WIU-issued or designated email account. Once mailed, emailed, and/or received in-person, notice is presumptively delivered.

The Notification of Outcome specifies the finding for each alleged policy violation, any sanction(s) that may result which WIU is permitted to share pursuant to state or federal law, and the rationale supporting the essential findings to the extent WIU is permitted to share under state or federal law.

The notice will detail when the determination is considered final and will detail any changes that are made prior to finalization.

Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party. The Notification of Outcome also includes the grounds on which the parties may appeal and the steps the parties may take to request an appeal of the findings. More information about the appeal procedures can be found in **section 11** below.

10. Additional Details of the Investigation Process

a. Witness responsibilities

Witnesses (as distinguished from the parties) who are faculty or staff of WIU are expected to cooperate with and participate in WIU's investigation and resolution process. While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Google Meet, Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. WIU will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

b. Remote processes

Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator(s) or Decision-maker determine that timeliness or efficiency dictates a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator(s), though this approach is not ideal. Where remote technologies are used, WIU makes reasonable efforts to ensure privacy, and that any technology does not work to the detriment of any party or subject them to unfairness.

c. Recording

No unauthorized audio or video recording of any kind is permitted during the resolution process, with the exception of the recording or transcript of a *Title IX Sexual Harassment* hearing. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

d. Evidence

Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

e. Sexual history/patterns

Unless the OEOA Coordinator determines it is appropriate, the investigation and the finding do not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) the character of the parties; and (3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

f. Previous allegations/violations

While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the OEOA Coordinator with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct. Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s), if WIU uses a progressive discipline system.

11. Hearing Process – Title IX Sexual Harassment Complaints

WIU will provide a live hearing for complaints of *Title IX Sexual Harassment*. This process is described in detail in Appendix B.

12. Sanctions

Factors considered when determining any sanction(s)/responsive action(s) may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the OEOA Coordinator

The sanction(s) will be implemented as soon as is feasible. The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by outside authorities.

a. Student Sanctions

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

Primary sanctions include:

- *Letter of Warning*: An official letter of warning is placed in the student's judicial file.
- *Probation Level I*: Probation set for a specific length of time. If an individual is found in violation of any WIU policy during that time, a more serious sanction will be imposed.
- *Probation Level II*: Probation set for a specific length of time. Students on Probation Level II may be removed from leadership positions in student organizations. Any student found in violation of this level of probation will have a more serious sanction imposed, usually Withheld Suspension. Students on Probation Level II may not be permitted to participate in WIU-affiliated travel (e.g., Spring Break Immersion Trips, study abroad experiences, etc.) and/or leadership positions in Registered Student and/or Greek Letter Organizations.
- *Withheld Suspension*: Withheld Suspension is for a specific period of time. Students on Withheld Suspension may be immediately suspended from WIU if the student is involved with a violation of any WIU policy during the stated period of time. This is the most serious sanction short of suspension. Students on Withheld Suspension may not be permitted to participate in WIU-affiliated travel (e.g., Spring Break Immersion Trips, study abroad experiences, etc.) and/or leadership positions in Registered Student and/or Greek Letter Organizations.
- *Suspension*: A set length of time when an individual may not be involved in any aspect of WIU. This includes courses, housing, and campus activities. A student may apply for readmission at the end of the suspension period.
- *Expulsion*: A student is dismissed from WIU permanently.

Supplemental Sanctions (to be used in addition to primary sanctions):

- *Educational Sanction*: The Formal resolution team may decide to issue a sanction, within reason, that will be beneficial in assisting the student to understand the impact of their behavior on the community. This may include but is not limited to:
 - Writing a research paper or reflective piece relevant to the violation.
 - Meeting with a faculty or staff member to discuss items relevant to the violation.
 - Develop an action plan to deter further violations.
 - Develop a program or publicity campaign relevant to the violation.
- *Withheld Removal from Housing*: This sanction means that if a student is involved in a violation of any WIU policy during the stated period of time, he/she may be immediately removed from WIU housing.
- *Housing*: A student's current and future housing status may be changed if such an action is deemed beneficial for either WIU or the student.
- *Referral for Assessment*: This could include, but not be limited to, behavioral, psychological, or substance use assessments.

b. Employee Sanctions

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

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions: In addition to or in place of the above sanctions, WIU may assign any other sanctions as deemed appropriate.*

13. Withdrawal or Resignation While Charges are Pending

Students: WIU does not permit a student to withdraw if that student has an allegation pending for violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination. WIU may place a hold, bar access to an official transcript, and/or prohibit graduation as necessary to permit the resolution process to be completed.

Employees: Should an employee resign with unresolved allegations pending, the records of the OEOA Coordinator will reflect that status, and any WIU responses to future inquiries regarding employment references for that individual will include the former employee's unresolved status.

14. Appeals

All requests for appeal consideration must be submitted in writing to the OEQA Coordinator within 5 business days of the delivery of the written finding of the Decision-makers. Any party may appeal the findings only under the grounds described below.

A three-member appeals panel chosen will be designated by the OEQA Coordinator. One member of the Appeal Panel will be designated as the Chair. Any party may appeal, but appeals are limited to the following grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g., substantiated bias, material deviation from established procedures).
- To consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The OEQA Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.
- The sanction(s) imposed were not appropriate for the violation of the Policy which the accused was found to have committed.

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

When any party requests an appeal, the OEQA Coordinator will share the appeal request with the other party(ies) or other appropriate persons such as the Investigator(s), who may file a response within three (3) business days. The other party may also bring their own appeal on separate grounds.

If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within 3 business days. These responses or appeal requests will be shared with each party. The Appeal Panel will typically review the appeal request(s) within three (3) to five (5) business days of completing the pre-appeal exchange of materials. If grounds are not sufficient for an appeal, or the appeal is not timely, the appeal Chair/Panel dismisses the appeal.

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

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' WIU-issued email or otherwise approved account.

Once mailed, emailed and/or received in-person, notice will be presumptively delivered. b.

Sanctions Status during the Appeal

- a. Sanctions Status During the Appeal

Sanctions imposed as a result of the hearing will not be in effect during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

WIU may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

b. Appeal Considerations

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

15. Long-Term Remedies/Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the OEOA Coordinator may implement long-term remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its recurrence.

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

- Referral to counseling and health services

- Referral to the Employee Assistance Program
- Education to the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the OEOA Coordinator, long-term remedies may also be provided to the Complainant even if no policy violation is found.

When no policy violation is found, the OEOA Coordinator will address any remedial requirements owed by WIU to the Respondent.

16. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions

All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Decision-makers. Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/responsive/corrective action(s), including suspension, expulsion, and/or termination from WIU. A suspension will only be lifted when compliance is achieved to the satisfaction of the OEOA Coordinator.

17. Recordkeeping

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept for seven years, or as required by state or federal law or institutional policy, by the OEOA Coordinator in the Title IX case database. During an investigation of a complaint, and upon the completion of an investigation, the custodian of the files shall be the Office of Equal Opportunity and Access/Title IX. Future access to any file shall be provided in keeping with the Illinois Open Records Act and FERPA.

18. Statement of the Rights of the Parties

Rights provided to Complainants:

- A. File a criminal report – Survivors may report acts they believe to be in violation of criminal law to the Office of Public Safety (on campus incidents) or the Macomb (or local) Police Department (off campus incidents) and/or
- B. File an administrative (Title IX) complaint – Survivors may report acts they believe to be in violation of the Sexual Misconduct & Gender Non-Discrimination policy to the Title IX Coordinator who will inform the survivor of her/his right to:
 1. An effective internal investigation of complaints (using the preponderance of the evidence standard) separate from law enforcement or criminal proceedings.

2. The implementation of protective interim steps prior to the final outcome of the investigation (e.g.: changes to class/work schedule, living/dining/transportation arrangements, implementation of safety protocols and academic supports, etc.)
 3. Notification of the investigatory outcome
 4. Protection from retaliation
 5. Opportunity to have an advisor
 6. File an appeal
- C. Choose not to report or file a complaint at all. However, if the Survivor chooses not to report immediately following the incident, she/he may still report at a later time. However, the period of time elapsed between the incident and reporting may negatively impact the ability to investigate.

Rights provided to Respondents:

1. An effective internal investigation of complaints in a timely manner (using the preponderance of the evidence standard) separate from law enforcement or criminal proceedings. This investigation will provide both parties the opportunity to provide witnesses and evidence.
2. The implementation of protective interim steps prior to the final outcome of the investigation (e.g.: changes to class/work schedule, living/dining/transportation arrangements, implementation of safety protocols and academic supports, etc.)
3. Notification of the investigatory outcome
4. Protection from retaliation
5. Opportunity to have an advisor
6. File an appeal

19. Disabilities Accommodation in the Resolution Process

WIU is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution process at WIU. Anyone needing such accommodations or support should contact **the Director of the Disability Resource Center or the Director of Human Resources**, who will review the request and, in consultation with the person requesting the accommodation, and the OEOA Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

20. Revision

These policies and procedures will be reviewed and updated annually by the OEOA Coordinator. WIU reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect.

The OEOA Coordinator may make minor modifications or corrections to these procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

The OEOA Coordinator may also vary procedures materially with notice (on the WIU website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.

Procedures in effect at the time of the offense will apply to resolution of incidents, regardless of when the incident occurred.

Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy.

If government regulations change in a way that impacts this document, this document will be construed to comply with the most recent government regulations.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This policy and procedure was implemented on August 14, 2020.

This Policy and procedure was adapted from the ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL

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Appendix B: The Hearing Process for Formal Complaints of Title IX Sexual Harassment

The University will provide a live hearing for formal complaints of *Title IX Sexual Harassment*.

1. Hearing/Decision-Maker

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

The Decision-maker(s) will not have had any previous involvement with the investigation

The investigator(s) will be a witness in the hearing and therefore may not serve as a Decision-maker. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

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

2. Evidentiary Considerations in the Hearing

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

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

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

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

3. Notice of Hearing

No less than ten (10) business days prior to the hearing, the OEOA Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice

will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated a description of the applicable procedures, and a statement of the potential sanctions /responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the OEOA Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the OEOA Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair, working with the administrative facilitator, may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the OEOA Coordinator if they do not have an Advisor, and WIU will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.⁷
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the OEOA Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Notification that parties can bring mobile phones/devices into the hearing, so long as they are turned off/not a distraction.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by WIU and remain within the 60-90 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter are fully resolved (including any appeal). A student facing

⁷ The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

charges under this Policy is not in good standing to graduate.

4. Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the OEOA Coordinator at least five (5) business days prior to the hearing. The OEOA Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the OEOA Coordinator know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

5. Pre-Hearing Preparation

The Chair or OEOA Coordinator, after any necessary consultation with the parties and Investigator(s), will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

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

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the OEOA Coordinator as soon as possible and no later than two days prior to the hearing. Decision-makers will only be removed if the OEOA Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The OEOA Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the OEOA Coordinator as soon as possible.

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

6. Pre-Hearing Meetings

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any

improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

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

The pre-hearing meeting(s) will not be recorded, unless deemed necessary by the chair and with consent of the parties.

7. Hearing Procedures

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

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent), Advisors to the parties, any called witnesses, potentially a hearing facilitator and/or the OEOA Coordinator and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

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

8. Joint Hearings

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

However, the OEOA Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings,

separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

9. The Order of the Hearing – Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the OEOA Coordinator will review and decide the challenge. The Chair conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing Process are managed by a non-voting hearing facilitator appointed by the OEOA Coordinator. The hearing facilitator, who could be the OEOA Coordinator, may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

10. Investigator Presents the Final Investigation Report

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

11. Testimony and Questioning

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

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

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

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

12. Refusal to Submit to Cross-Examination and Inferences

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.

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

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

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

13. Recording Hearings

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

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of WIU will be permitted to listen to the recording in a controlled environment determined by the OEOA Coordinator.

14. Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of

proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

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

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

The Decision-maker(s) will review the statements and any pertinent conduct history provided by the OEOA Coordinator and will determine the appropriate sanction(s) for students. For employees, the Decision-maker(s) will recommend the appropriate sanction(s), in consultation with other appropriate administrators (**such as the Director of Human Resources and/or the Provost**).

The Chair will then prepare a written deliberation statement and deliver it to the OEOA Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions or recommendations.

This report typically should not exceed three (3) to five (5) pages in length and must be submitted to the OEOA Coordinator in a timely manner (typically two (2) to five (5) business days) after the end of deliberations, unless the OEOA Coordinator grants an extension. If an extension is granted, the OEOA Coordinator will notify the parties.

15. Notice of Outcome

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

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

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent WIU is permitted to share such information under state or federal law; any sanctions issued which WIU is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to WIU's educational or employment program or activity, to the extent WIU is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by WIU to

be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.