



Policies and Procedures

Administrative Policies and Procedures Manual

10.13 Interim Title IX Sexual Misconduct Policy & Procedures

Administrative Responsibility: Office of Equal Opportunity/Title IX Office

PURPOSE

This Interim Title IX Sexual Misconduct Policy and Procedures is intended to comply with the United States Department of Education Title IX regulations issued May 6, 2020.

SCOPE

Wayne State University ("WSU" or "the University") is committed to maintaining a safe learning, living and working environment. This includes having an environment free from sexual misconduct. Sexual misconduct under this policy is sex discrimination, sexual harassment, and retaliation that may violate Title IX of the Education Amendments of 1972 ("Title IX"). WSU does not discriminate on the basis of sex in its education programs or activities and is precluded from engaging in such discrimination by Title IX and its implementing regulations, 34 CFR Part 106. This prohibition also extends to the University's admission and employment processes.

DEFINITIONS

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the University's Title IX Coordinator or any University official with authority (OWA) to institute corrective measures for harassment, discrimination, and/or retaliatory conduct on behalf of WSU. Notice, as used in this definition, includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

Advisor means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and conduct cross-examination for the party at the hearing, if any. See Exhibit B for Rules for Advisors.

Confidential Resource means an employee who is not a Responsible Employee and thus is not a mandated reporter of notice of the harassment, discrimination, and/or retaliation (irrespective of the Clery Act Campus Security Authority status). If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

1. WSU Counseling and Psychological Services (CAPS)
2. Campus Health Center
3. Counseling and Testing Center within WSU College of Education
4. WSU Psychology Clinic
5. On-campus members of the clergy/chaplains/priests working within the scope of their licensure or ordination.
6. WSU Employee Assistance Program (EAP)
7. Off-campus (non-employees):
 - a. Licensed professional counselors and other medical providers
 - b. Local rape crisis counselors
 - c. Domestic violence resources
 - d. Local or state assistance agencies
 - e. Clergy/Chaplains
 - f. 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 the immediacy of threat or danger or abuse of a minor, elder, or individual with a disability, or when required to disclose by law or court order. Campus counselors and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours. WSU employees who are confidential will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client or patient.

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Consent means knowing, voluntary and clear permission by word or action to engage in sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity. Consent cannot be given if force, coercion, or incapacitation as defined below are present:

1. Force is the use of physical strength or action (no matter how slight), violence, threats of violence, or intimidation (implied threats of violence) as a means to engage in sexual activity. A person who is the object of actual or threatened force is not required to physically, verbally or otherwise resist the aggressor.
2. 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 it 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.
3. Incapacitation A person is incapacitated when they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including by alcohol or other drugs. 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.

Formal complaint a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in a Wayne State University education program or activity. A formal complaint may be filed with the Title IX Coordinator in person, by mail, via the online reporting form, or by electronic mail as stated in these procedures. 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 an online portal provided for this purpose by the University) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

Day means a day when the University is in normal operation.

Delay means a postponement of a deadline that would otherwise have applied.

Education program or activity means locations, events, or circumstances where WSU 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 WSU.

Official With Authority (OWA) means any Wayne State University employee who has the authority to institute corrective measures for harassment, discrimination, or retaliatory conduct on behalf of the University. Such Official With Authority for Wayne State University is the Title IX Coordinator.

Preponderance of evidence The standard of evidence that will be used to determine responsibility is the preponderance of the evidence, which means it is "more likely than not", based on all the admissible evidence and reasonable inferences drawn from the evidence, that the Respondent violated the Policy as alleged.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Responsible Employee means an employee of WSU who is obligated by this policy to share knowledge, notice, and/or reports of sexual harassment with the Title IX Coordinator. A list of Responsible Employees is attached as **Exhibit C**. Responsible Employees must report all allegations of sexual harassment, including, but not limited to, sexual assault, stalking, dating violence, and domestic violence to the Title IX Coordinator. The information to be reported must include the name of the complainant and respondent and, if known, dates, times, locations, and the names of witnesses.

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).
 - a. sexual assault - an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
 - b. dating violence violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship.
 - ii. The type of relationship.
 - iii. The frequency of interaction between the persons involved in the relationship.

- c. domestic violence includes felony or misdemeanor crimes of violence committed by:
- i. a current or former spouse or intimate partner of the victim,
 - ii. by a person with whom the victim shares a child in common,
 - iii. by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
 - iv. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
 - v. by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Michigan.
- d. Stalking - means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

Sexual Misconduct means sex discrimination, sexual harassment and retaliation that may violate Title IX.

Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

POLICY

For the purpose of this Interim Title IX policy, sexual harassment is defined as conduct on the basis of sex that satisfies one or more of the following:

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.
- A University employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

- "Sexual assault", as defined by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as more fully defined in the *Interim Title IX Procedures* (hereinafter *Interim Procedures*).
- "Stalking", "dating violence", and "domestic violence" as defined by the Violence Against Women Reauthorization Act of 2013 ("VAWA") as more fully defined in the *Interim Procedures*.

Sex discrimination, sexual harassment, and retaliation reported pursuant to this Interim Policy will be governed by the procedures set forth in the *Interim Procedures* in addition to other relevant policies/procedures in place at the University as specified in the *Interim Procedures*.

PROCEDURE

INTERIM TITLE IX PROCEDURES

All reports of sexual misconduct including sex discrimination, sexual harassment, and retaliation may be made to the University's Title IX Coordinator as set forth below:

Title IX Coordinator
656 W. Kirby, Suite 4249
Faculty Administration Building
Detroit, MI 48202
Phone: (313) 577-9999
Email: titleix@wayne.edu
Website: titleix.wayne.edu
Form Link: https://cm.maxient.com/reportingform.php?WayneStateUniv&layout_id=3

Questions about this *Interim Title IX Policy*, *Interim Procedures*, Title IX, and the applicability of Title IX to the University should be directed to the Title IX Coordinator as identified above or to the Assistant Secretary of Education for the U.S. Department of Education or both. The following is the contact information for the US Department of Education:

Office for Civil Rights (OCR)
U.S. Department of Education

Michigan, Ohio Office for Civil Rights-Cleveland Office
U.S. Department of Education

400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Phone: (800) 421-3481
Fax: (202) 453-6012
TDD: (877) 521-2172
Email: OCR@ed.gov
Web: https://www.ed.gov/ocr

1350 Euclid Avenue, Suite 325
Cleveland, OH 44115-1812
Phone: (216) 522-4970
Fax: (216) 522-2573
TDD: (800) 877-8339
Email: OCR.Cleveland@ed.gov

In addition to the above, US Department of Education complaints related to the Wayne State University School of Medicine may be made to:

Office for Civil Rights
US Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201
Phone: (800) 368-1019
TDD: (800) 537-7697

Office for Civil Rights
US Department of Health and Human Service
233 N. Michigan Ave., Suite 240
Chicago, IL 60601
Phone: (800) 368-1019
Fax: (202) 619-3818
TDD: (800) 537-7697
Email: ocrmail@hhs.gov

Additional reporting options are outlined in **Exhibit A** to these procedures.

The University will respond to allegations of sexual harassment prohibited by the Title IX Policy when the University has actual knowledge (as defined below) that sexual harassment has occurred. The University shall respond promptly and in a manner that is not deliberately indifferent to a report of sexual harassment. The Grievance Process as set forth herein is applicable only to allegations of sexual harassment as defined in these procedures.

Reports of sex discrimination and retaliation made pursuant to Title IX will be handled pursuant to the Wayne State University Policy 2005-03 Discrimination and Harassment Complaint Process.

PROMPTNESS

The University will act with reasonable promptness to conclude the Grievance Process set forth herein which is initiated by the filing of a Formal Complaint. Formal Complaints shall be resolved within 120 days from the filing of the Formal Complaint to the written determination. The University may temporarily delay the Grievance Process or provide a limited extension of time for good cause with written notice (1) to the complainant and respondent of the delay or extension, (2) the reasons for the action, and (3) an estimate of the anticipated additional time that will be needed as a result of the delay. As set forth in these procedures, the Informal Grievance Process will delay the time frame for resolving a formal complaint.

REPORTING TIMEFRAMES

The University encourages prompt reporting of sexual misconduct or other forms of prohibited conduct so that the University can respond promptly and equitably; however, the University does not limit the timeframe for reporting. If the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

CONFIDENTIALITY

The University shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, or any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of Title IX or its implementing regulations, 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

JURISDICTION

The University has jurisdiction over sexual harassment that occurs:

- in the University's education program or activity, and
- against a person in the United States.

EMERGENCY REMOVAL

Emergency removal of a respondent (whether an employee, student, or other people) from the University's education program and/or activities may be performed where an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual (including the respondent, complainant, or any other individual) arising from the allegations of

sexual harassment justifies removal. An emergency removal may be performed before an investigation into sexual harassment allegations concludes or where no investigation or grievance process is pending.

In cases involving the **emergency removal of a student**, the Dean of Students, University General Counsel, or other University presidential designee will decide whether the individualized safety and health analysis justifies removal of the respondent. The removal may include but is not limited to, removal from all University programs and activities including classes, teams, clubs, organizations, or other activities.

In cases involving the **emergency removal of a non-student employee**, the Chief Human Resources Officer, General Counsel, or other University presidential designee will decide whether the individualized safety and health analysis justifies removal of the respondent. The removal may include placing such employee on administrative leave in accordance with applicable University policies and procedures.

A respondent removed pursuant to this provision shall receive a post-removal notice and an opportunity to challenge the removal decision immediately following the removal. The respondent may challenge the removal by submitting a petition explaining the reason for their request and including any written evidence in support of such request. The materials should be submitted to the Title IX Coordinator, who will forward all materials to the University Appeals Officer. The University Appeals Officer will conduct the review of an Emergency Removal decision. The Appeals Officer will consider the petition no later than twenty (20) days after it receives the petition, with exceptions for good cause.

If the Appeals Officer determines that an Emergency Removal, or specific terms of removal, were not justified or, due to a change in circumstances, are no longer necessary, the Appeals Officer will instruct the Title IX Coordinator to immediately lift or modify the Emergency Removal, as appropriate. If the removal is lifted, the Title IX Coordinator may impose alternate reasonable and appropriate Interim Measures. The Appeals Officer may, but is not required to, provide the Title IX Coordinator with guidance regarding appropriate alternate Interim Measures. The Appeals Officer will provide a written decision to the parties and the Title IX Coordinator as soon as practicable. Where the Appeals Officer has entertained a petition and issued a decision regarding an Emergency Removal, the Appeals Officer's decision is final.

Non-Emergency Administrative Leave In non-emergency cases, non-student employees may be placed on administrative leave during the pendency of the University's Grievance Process. In such cases, the Chief Human Resources Officer or University General Counsel will have discretionary power to place such employee on administrative leave and determine the appropriate length of such leave in accordance with University policies and procedures.

USE OF PRIVILEGED INFORMATION

The University will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege during any stage of a resolution of a report under these procedures.

ACCESS OF TREATMENT RECORDS

The University will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so for the grievance process under these procedures.

SUPPORTIVE MEASURES

The Title IX Coordinator shall:

- promptly contact the complainant to discuss the availability of supportive measures as defined in these procedures;
- consider the complainant's wishes with respect to supportive measures; and
- inform the complainant of the availability of supportive measures with or without the filing of a formal complaint and explain to the complainant the process for filing a formal complaint.

The University shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Supportive measures may include, but are not limited to:

- counseling;
- extensions of deadlines or other course-related adjustments;
- modifications of work or class schedules;
- mutual restrictions on contact between the parties;
- changes in work or housing locations;
- leaves of absence;
- increased security and monitoring of certain areas of the campus;

- other similar measures as determined by the Title IX Coordinator.

TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCESS

COMPLAINANT AND RESPONDENT EXPECTATIONS

Pursuant to these procedures, complainants and respondents can expect:

- a. Prompt and equitable resolution of allegations of prohibited conduct.
- b. The University will treat complainants and respondents equitably by following the grievance process in these procedures before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in these procedures against a respondent.
- c. Privacy in accordance with these procedures and any legal requirements.
- d. Reasonably available and appropriate supportive measures, as described in these Procedures.
- e. A presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Grievance process.
- f. The University to issue appropriate remedies to a complainant where a determination of responsibility has been made against the respondent pursuant to the Grievance process set forth in these Procedures.
- g. Any remedies issued by the University shall be designed to restore or preserve equal access to the University's education program or activity.
- h. The imposition of disciplinary sanctions or other actions that are not supportive measures against a respondent will be imposed pursuant to the Grievance process set forth in these Procedures.
 - a. An objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
 - j. Credibility determinations shall not be based on a person's status as a complainant, respondent, or witness.
 - k. The University Title IX Coordinator, investigator, decision-maker, or any person designated by the University to facilitate its informal resolution process not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- ax. Freedom from retaliation as further defined and described in these Procedures.

NOTICE TO BE PROVIDED UPON RECEIPT OF A FORMAL COMPLAINT

Upon receipt of a formal complaint, The Title IX Office will provide the following written notice to the parties who are known:

- a. Notice of the University's grievance process, including any formal resolution process.
- b. Notice of the allegations of sexual harassment potentially constituting sexual harassment including identification of the parties involved, date, and location of the alleged incident, if known, and be provided with sufficient time to prepare a response before any initial interview.
- c. Notice of additional allegations if, in the course of an investigation, the University decides to investigate allegations about the complainant or respondent that are not included in the initial notice(s) provided pursuant to this section.
- d. Notice that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- e. Notice that the parties may have an advisor of their choice as stated in these procedures.
- f. Notice of conduct provisions that prohibit knowingly making false statements or knowingly submitting false information during the grievance process.
- g. Notice of any interim measures provided.
- h. Detail on how the party may request disability accommodations during the interview process.
- a. The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have.

CONSOLIDATION OF FORMAL COMPLAINTS

The University may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable.

DISMISSAL OF FORMAL COMPLAINT

The University must investigate the allegations in a formal complaint. The following basis for mandatory and discretionary dismissal will be applied:

Mandatory Dismissal

The University shall dismiss a formal complaint, or allegations therein, for purposes of sexual harassment under Title IX where:

- the conduct alleged in the formal complaint would not constitute sexual harassment as defined in these Procedures even if proved;

- the conduct did not occur in the University's education program or activity; or
- the conduct did not occur against a person in the United States.

Such a dismissal does not preclude action under another provision of the Wayne State University Policy 2005-03 Discrimination and Harassment Complaint, Student Code of Conduct, or applicable collective bargaining agreement.

Discretionary Dismissal

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

- A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- The respondent is no longer enrolled or employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a mandatory or discretionary dismissal, the University shall promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

INVESTIGATION OF FORMAL COMPLAINT

When investigating a formal complaint and throughout the grievance process, the University will:

- a. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties.
- b. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- c. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- d. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding except subject to the restrictions stated in these grievance procedures.

- e. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- f. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- g. Prior to completion of the investigative report, the University shall send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties shall have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The University shall make all such evidence subject to the parties' inspection, and shall make review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- h. The University shall create an investigative report that fairly summarizes relevant evidence and, at least 10 days before a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

HEARING PROCESS

The University shall provide a live hearing under these Grievance Procedures which may be conducted in person or virtually at the University's option. The following applies with respect to live hearings:

- a. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the University to otherwise restrict the extent to which advisors may participate in the proceedings pursuant to these Procedures. [See **Exhibit B** for rules for advisor's participation during hearings].
- b. At the request of either party, the University shall provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
- c. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

- d. If a party does not have an advisor present at the live hearing, the University must provide without fee or charge to that party, an advisor of the University's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- e. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant 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. The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- g. Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- h. The University shall create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection.

DETERMINATION REGARDING RESPONSIBILITY

After the completion of the live hearing, the decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), shall issue a written determination regarding responsibility using the preponderance of the evidence standard as defined in these procedures. The written determination shall include:

- a. Identification of the allegations potentially constituting sexual harassment as defined in these procedures;
- b. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding the application of the University's code(s) of conduct to the facts;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the complainant; and
- f. The University procedures and permissible bases for the complainant and respondent to appeal.

The University shall provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The Title IX Coordinator is responsible for effective implementation of any remedies.

INFORMAL RESOLUTION

The parties may agree to informally resolve a formal complaint through an alternate resolution mechanism such as mediation ("Informal Resolution Process"). The Informal Resolution Process, however, is not available to resolve a formal complaint that an employee sexually harassed a student, nor to resolve cases involving sexual assault. Either party may seek assistance in obtaining an informal resolution from the Title IX Coordinator, who can arrange to have a trained representative facilitate a meeting or meetings between the parties. The availability of the Informal Resolution Process, and any resolution reached, is subject to the agreement of the Title IX Coordinator (or designee), the complainant, and the respondent. The University may decline a request by the parties to engage in an Informal Resolution Process and may terminate the Informal Resolution Process at any time.

Through the Informal Resolution Process, the formal complaint may be resolved on any basis acceptable to the parties and the Title IX Coordinator. For example, the matter may be resolved by providing supportive measures sufficient to restore equal access to the University's education programs or activities or where the respondent accepts responsibility for violating the Title IX policy and the sanction or remedy for such violation.

Participation in an informal resolution process is strictly voluntary. The parties' voluntary, written consent is required to engage in this process. The University will not compel the parties to engage in informal resolution, will not compel a complainant to directly confront the respondent, and will allow a complainant or respondent to withdraw from the informal resolution process at any time prior to agreeing to a resolution and resume the grievance process with respect to the formal complaint.

The informal resolution process is intended to be flexible and undertaken in the reasonable discretion of the Title IX Coordinator, so as to address an individual's situation in the most effective and expeditious manner possible.

Title IX Coordinator may attempt to facilitate a resolution to the issue presented without a formal investigation. However, under the Informal Resolution Process, the investigator shall only be required to conduct such fact-finding as is useful to resolve the conflict and as is necessary to protect the interests of the parties, the University, and the community.

Pursuing informal resolution does not preclude later use of the formal investigation process prior to a hearing and written determination.

In cases where Informal Resolution is chosen by the Parties, they will receive a written notice disclosing the allegations, along with a copy of the Procedures setting forth the requirements of the Informal Resolution Process. The written notice will also state any sanctions or measures that may result from participating in such process, including records that will be maintained or could be shared by WSU.

The Informal Resolution Process may utilize any combination of interventions and remedies. If an agreement acceptable to the University, the complainant, and the respondent is reached through informal resolution, the terms of the agreement are put in writing and are implemented and the matter is resolved and closed. Once the matter is resolved and closed, the parties are precluded from resuming a formal complaint arising from the same allegations. If an agreement is not reached, the formal Grievance Process will have been delayed by length of time devoted to the Informal Resolution process, and the formal Grievance Process will continue.

The time period for resolution of a Formal Complaint through the Informal Resolution Process is 60 days. The University may temporarily delay the Informal Resolution Process or provide a limited extension of time for good cause with written notice (1) to the complainant and respondent of the delay or extension, (2) the reasons for the action, and (3) an estimate of the anticipated additional time that will be needed as a result of the delay. If the Formal Complaint is not resolved within this time frame, the formal Grievance Process will resume.

DISCIPLINARY SANCTIONS

Sanctions that may be imposed upon a respondent following a determination of responsibility for violation of this policy include:

Student Sanctions

- *Warning:* A formal statement that the behavior was unacceptable and a warning that further infractions of any university policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Probation:* A written reprimand for violation of university policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any university policy, procedure or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at

Wayne State University. At the discretion of the Title IX Coordinator, this sanction may be noted as a Disciplinary Suspension on the student's official transcript.

- *Expulsion*: Permanent termination of student status, revocation of rights to be on campus for any reason or attend university-sponsored events. This sanction will be noted as a Conduct Expulsion on the student's official transcript.
- *Withholding Diploma and/or Official Transcripts*: The University may withhold a student's diploma and/or official transcripts for a specified period of time, and/or deny a student participation in commencement activities, if the student has an allegation pending, or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: The university reserves the right to revoke a degree previously awarded from the university for fraud, misrepresentation, or other violation of university policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including university registration), for a specified period of time.
- *Supportive Measures*: as defined in these procedures.
- *Other Actions*: In addition to or in place of the above sanctions, the university may assign any other sanctions as deemed appropriate.

Employee Sanctions

- Warning Verbal or Written
- Performance Improvement/Management Process
- 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, the university may assign any other sanctions as deemed appropriate.

Discipline and sanctions for employees will be issued consistent with WSUCA 2.51.01, Appointments, Continuing Tenure, Termination and Dismissal Policies and Procedures for Faculty; WSUCA 2.52.01, Appointments, Tenure, Employment Security Status, Termination and Dismissal Policies and Procedures for Academic Staff; and Union Collective Bargaining Agreements (CBA) to the extent applicable and *not inconsistent* with Title IX and the procedures stated herein.

REMEDIES

The University will provide appropriate remedies to a complainant where a finding of responsibility has been made against a respondent. Remedies issued by the University must be designed to restore or preserve equal access to the University's education program or activity. Such remedies may include the same individualized services described as "supportive measures" in these procedures; however, remedies need not be non-disciplinary or non-punitive, and need not avoid burdening the respondent.

APPEALS

Either Complainant or Respondent may file a Request for Appeal from 1) a determination regarding responsibility following a hearing or 2) the dismissal of a formal Complaint or any allegation therein. The Request for Appeal must be submitted in writing to the Title IX Coordinator within seven (7) days of the delivery of a written determination regarding responsibility or dismissal of a formal Complaint or allegation therein and state the grounds for appeal. The time period from the initiation of an appeal until the issuance of a written determination of that appeal is 30 days. The University may provide for a temporary delay or a limited extension of time for the entire appeal process or for any specific appeal process deadline for good cause and with written notice (1) to the complainant and respondent of the delay or extension, (2) the reasons for the action, and (3) an estimate of the anticipated additional time that will be needed as a result of the delay.

The Title IX Coordinator will notify the other party in writing that an appeal has been filed and, in addition, forward the Request for Appeal to the Appeals Officer who will determine whether any grounds for appeal, as set forth below, are met. The Appeals Officer will make this determination within five (5) days of receipt of the Request for Appeal.

The President or their designee will serve as the Appeals Officer. The following individuals may not serve as Appeals Officer:

- The decision maker(s) in the underlying proceeding;
- Any investigator in the matter; or
- The Title IX Coordinator.

The Appeals Officer will be free of any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent and will receive requisite training on the definition of sexual harassment, the scope of the University's education program or activity, and how to conduct an investigation and grievance process.

A determination in a Title IX matter will be considered final if 1) neither party appeals or 2) the appeals process has concluded *i.e.* when a final decision is made on appeal or remand and there is no further appeal following remand. If the Appeals Officer remands the matter to the Hearing Officer and a decision or sanction is changed on remand, either party may appeal on any permitted grounds and pursuant to the procedures set forth herein.

All notices referenced in this Section will be provided by e-mail. For students, faculty and staff, notice will be sent to their University e-mail address. Once e-mailed, notice will be presumptively delivered.

Grounds for Appeal and Notice

Appeals are limited to the following grounds:

1. Procedural irregularity that materially affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal of a formal Complaint or allegation therein was made, and the new evidence could materially affect the outcome of the matter;
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific Complainant or Respondent that materially affected the outcome of the matter; and
4. Mistake of applicable law or regulations or mistake of terms as defined by the University in this Policy that materially affected the outcome.

The Appeals Officer's initial review of the Request for Appeal is not a review of the merits of the appeal, but solely a determination as to whether the Request for Appeal meets any of the grounds for appeal set forth herein and is timely filed.

The Appeals Officer will provide written notification to the Parties and their advisors if the grounds for appeal are not met and/or if the appeal is not timely filed.

If any of the grounds for appeal are met and the appeal is timely filed, the Appeals Officer will provide written notification to the Parties, their advisors, the Title IX Coordinator, and, if appropriate, the investigators and/or Hearing Officer along with a copy of the Request for

Appeal and approved grounds for appeal. The appealing party will be given seven (7) days from receipt of the written notification to submit a written statement to the Appeals Officer in support of the outcome requested on appeal. The Appeals Officer will forward the written statement to all Parties. The party opposing the appeal will then be given seven (7) days from receipt of the appealing party's written statement to submit a written statement in opposition to the outcome requested on appeal. Upon receipt, the Appeals Officer will forward the written opposition statement to the other party for review and comment.

Neither Party may submit a Request for Appeal after the time period to do so has expired.

Review of Appeal

The Appeals Officer will collect all information and documentation relevant to the grounds for appeal, including the written statements and any comments submitted by the Parties.

Following an objective review of the relevant information and documents, the Appeals Officer will issue a written decision in no more than fourteen (14) days, unless the time period is extended or delayed in accordance with the procedure stated above. The Appeals Officer will consider only the issue on appeal and will not reconsider findings of fact made by the Hearing Officer. The Appeals officer will not weigh the credibility of witnesses. Deference will be given to the Hearing Officer.

Any sanctions imposed will be stayed during appeal. Supportive measures may be implemented for the duration of the appeal.

Appeal Outcome and Remedies

The Appeal Outcome may include affirming the original decision, reversing the decision, and/or remanding the matter to the Hearing Officer with specific instructions. Remedies available on remand are the same as those available at the initial hearing.

The Appeals Officer will send a written Notice of Appeal Outcome to all Parties and their advisors simultaneously. The Notice of Appeal Outcome will specify the findings, decision and rationale for the decision on each approved ground for appeal as well as any instructions for remand where applicable.

In cases in which the appeal results in Respondent's reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status to the extent possible

RETALIATION

University policy and federal law prohibit retaliation taken against an individual for making a good faith report or complaint of sexual misconduct or other conduct prohibited under this policy; testifying, assisting or participating or refusing to participate in any proceeding under this policy; supporting a Complainant or Respondent; providing information relevant to an investigation under this policy; or otherwise opposing conduct prohibited by this policy (collectively, "Protected Activity").

Retaliation includes any materially adverse action taken by the University or any member of the University community, including, but not necessarily limited to, intimidation, threats, coercion, harassment or discrimination against an individual for engaging in Protected Activity.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under Title IX or these Procedures. Retaliation does not include any disciplinary measures or other adverse action taken for making a bad faith report or Complaint or for making a materially false statement in bad faith in the course of any investigation or proceeding under this Policy provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Any person who believes they have been subjected to retaliation should immediately notify the Title IX Coordinator. Any alleged retaliation will be promptly investigated.

The University will not share the identity of an individual making a report of retaliation or any witnesses thereto except where permitted by the Family Educational Rights and Privacy Act (FERPA); where required by law; or where necessary to conduct an investigation, hearing or grievance process under this Policy.

RECORD KEEPING

The University shall maintain for a period of seven years:

- Records of any investigations conducted pursuant to this Policy, including any determination regarding responsibility;
- Any required audio or audiovisual recording or transcript;
- Any disciplinary sanctions imposed on the respondent;
- Any remedies, including any supportive measures, provided to the complainant designed to restore or preserve equal access to the University's education program or activity;

- Records related to any appeal and the result therefrom;
- Records related to any informal resolution and the result therefrom;
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The University shall make these training materials publicly available on its website, or if the University does not maintain a website the University shall make these materials available upon request for inspection by members of the public.

The University shall also create and maintain for a period of seven years any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the University shall document the basis for its conclusion and that it has taken measures designed to restore or preserve equal access to the University's education program or activity.

If the University does not provide a complainant with supportive measures, then the University must document the reasons. The documentation of certain bases or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken.

APPENDICES

1. Exhibit A Additional Reporting Options
2. Exhibit B Rules for Advisors
3. Exhibit C Responsible Employees

RELATED UNIVERSITY/BOARD POLICIES

N/A

Effective Date: 8/14/2020

Revised Date: 9/19/2022

Reviewed Date: 9/19/2022

To be reviewed, at minimum, every three years and/or revised as needed by: Legal Counsel

Next Review by Date: 9/19/2025

SUPERSEDES POLICY

N/A

HISTORICAL DATES

N/A

EXHIBIT A

ADDITIONAL REPORTING OPTIONS

In addition to reporting sexual harassment to the Title IX Coordinator as stated in the Title IX Procedures, the following contacts are provided as additional reporting options:

1. Report to Law Enforcement

Although the University strongly encourages all members of its community to report incidents of criminal sexual conduct to law enforcement, it is the complainant's choice whether to make such a report and complainants have the right to decline involvement with the police. The University's Title IX Coordinator will assist any complainant with notifying the Wayne State Police if they choose to do so. Under limited circumstances posing a threat to health or safety of any University community member, the University may independently notify law enforcement.

University Police	Local Police
Wayne State University Police Department 6050 Cass Avenue Detroit, MI	Detroit Police Department Third Precinct 2875 W. Grand Blvd.

(313) 577-2222 (EMERGENCIES)
(313) 577-6057 (NON-EMERGENCIES)

Detroit, MI 48202
(313) 596-1984

The Wayne State Police are available 24 hours a day, 7 days a week, and 365 days a year. They provide a full range of professional police services to the main and medical campuses as well as surrounding neighborhoods. The Wayne State Police are prepared to handle all criminal activity, including incidents involving sexual assault, dating violence, domestic violence, and stalking, as well as any significant emergency.

2. University Deputy Title IX Coordinators:

Deputy Title IX Coordinator for Students Dean of Students 301 Student Center Building 5221 Gullen Mall Detroit, MI 48202 <u>(313) 577-1010</u>	Deputy Title IX Coordinator for Employees Associate Vice President Office of Equal Opportunity 656 W. Kirby, Suite 4342 Detroit, MI 48202 <u>(313) 577-2280</u>
Deputy Title IX Coordinator for Campus Housing Director of Residence Life 582 Student Center Building 5221 Gullen Mall Detroit, MI 48202 <u>(313) 577-2116</u>	Deputy Title IX Coordinator for Athletics Senior Associate Athletics Director 5101 John C. Lodge Matthaei 101 Detroit, MI 48202 <u>(313) 577-3048</u>
Deputy Title IX Coordinator, Medical School Vice Dean, Office of Faculty Affairs & Professional Development School of Medicine, 1213 Scott Hall	

Detroit, MI 48202
(313) 577-2378

3. Make An Anonymous Report

Those who wish to make an anonymous report may do so in one of two ways:

Wayne State Police: police.wayne.edu/crime_tip.php

Office of Internal Audit: internalaudit.wayne.edu/report.php or [313-577-5138](tel:313-577-5138)

The Title IX Coordinator will respond promptly and equitably to anonymous reports. Still, the response may be limited if the report does not include identifying information and/or a description of the facts and circumstances. Anonymous reports that provide enough information to constitute certain criminal offenses will be reported to WSU Police for purposes of inclusion in the University's Annual Security and Fire Safety Report and to assess whether the University should send a Timely Warning Notice as required by the Clery Act.

EXHIBIT B

RULES FOR ADVISORS

The primary role of the advisor is to advise the party on the Title IX resolution process. Advisors are subject to the University's policies and procedures. At all times, the advisor must behave ethically, with integrity, respect, and civility, and in good faith. They must refrain from disruptive behavior and from overstepping the limits of the advisor role.

An advisor may accompany a party wherever the party is entitled to be present, including intake, interviews, meetings, and hearings. A party may consult with their advisor as necessary during those proceedings or privately.

Advisors may not directly address or make a presentation to administrative officials unless invited to do so. At a hearing, the advisor must conduct the cross-examination on behalf of the party. The advisor may also conduct direct and re-direct examinations of the advisor's party or a witness. The advisor may not make an opening statement or a closing argument. The advisor is not permitted to object to an offer of evidence except on the grounds of privilege or the rule limiting questions or evidence about the complainant's sexual predisposition or prior sexual behavior.

EXHIBIT C

RESPONSIBLE EMPLOYEES

The following employees are Responsible Employees with the exception of those providing Confidential Resources as defined in these Grievance Procedures:

- Academic Deans
- Dean of Students
- Provost
- Associate Provosts
- Department Chairs
- Faculty
- Graduate Teaching Assistants (GTAs)
- Human Resources Associate Vice President, Directors, and Consultants
- WSU Police Department officers and leadership;
- Campus Security Monitors employed by WSUPD and deployed in major buildings, libraries, housing facilities and satellite facilities to assist with access and security;
- Athletics department leadership, all volunteer and paid levels of coaches, trainers;
- Mort Harris Recreation Center leadership, professional staff, and student employees;
- Housing and Residential Life leadership, professional staff, department desk assistants, office service clerks, community directors, resident directors, resident advisors, community assistants, and summer assistants;
- Student Center leadership, professional staff, and student employees;
- Advisors of all recognized student organizations through the Dean of Students Office employed with the University;
- Office of Multicultural Student Engagement director-level and program staff;
- Student Disability Services director-level and professional staff;
- Office of International Education study abroad leaders (faculty and staff)
- Designated student affairs coordinators and program officers in all Schools, Colleges and Divisions;
- Academic Advisors

