

**William Paterson University**  
**Title IX Grievance Process for Sexual Harassment Complaints**

<b>SUBJECT:</b>	University Policy		<b>TITLE:</b>	Title IX Grievance Process for Sexual Harassment Complaints	
<b>CATEGORY:</b> <b>Check One</b>	<b>Board of Trustees</b> <input type="checkbox"/>	<b>University</b> <input checked="" type="checkbox"/>	<b>Functional</b> <input type="checkbox"/>	<b>School/Unit</b> <input type="checkbox"/>	
<b>Responsible Executive:</b>	Chief Diversity Officer			<b>Responsible Office:</b>	Office of Institutional Equity and Diversity
<b>CODING:</b>	00-01-	<b>ADOPTED:</b>	04/19/23	<b>AMENDED:</b>	01/24/2025

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## **I. PURPOSE**

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence)
- Addresses how William Paterson University (hereafter "the University") must respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that the University must follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

Based on the Final Rule, William Paterson University ("the University") implements the following Title IX Grievance Process for Complaints of Sexual Harassment ("Title IX Grievance Process") and Title IX Grievance Policy for Sexual Harassment Complaints ("Title IX Grievance Policy,").

## **II. ACCOUNTABILITY**

Under the direction of the President, the Title IX Coordinator housed in the Office of Institutional Equity and Diversity ("OIED"), is empowered to implement and ensure institutional compliance with the University's Title IX Grievance Policy and Process for Sexual Harassment Complaints.

Students found responsible for a violation of Prohibited Conduct will be subject to the range of sanctions listed in Appendix D. Employees found responsible for a violation of Prohibited Conduct will be subject to disciplinary proceedings and other applicable University policies and procedures in accordance with any applicable bargaining agreement.

## **III. APPLICABILITY**

The Title IX Grievance Policy addresses reports of sexual harassment made by students or employees. This policy and these procedures apply to current students, current employees, recognized student organizations, applicants for admission and/or employment, when the alleged conduct occurs (A) in the United States, (B) in the University's program or activity and (C) when the alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

For matters that do not meet the definition of sexual harassment, the University reserves the right to address the misconduct under other applicable University policies and procedures.

## **IV. DEFINITION(S)**

See Section V "Definitions" of the Title IX Grievance Policy for Sexual Harassment Complaints

## **V. POLICY**

See [Title IX Grievance Policy for Sexual Harassment Complaints](#).

## **VI. TITLE IX GRIEVANCE PROCESS**

### **A. How to File a Complaint**

1. The Title IX Coordinator is responsible for investigating all complaints involving students, employees and/or contractors. The Title IX Coordinator is:  
Sobia Mahmood, JD.  
Director of Institutional Equity and Compliance/Title IX Coordinator  
358 Hamburg Turnpike  
Wayne, NJ 07470  
TitleIX@wpunj.edu  
973-720-2389
2. Any person may report sexual harassment at any time to the Title IX Coordinator. Reports may be made in person, or by mail, telephone or email using the contact information listed above.
3. It is a violation of these procedures for anyone to make false accusations of sexual harassment. Failure to prove a claim of sexual harassment, however, is not equivalent to making a false accusation. Sanctions may be imposed for intentionally making groundless or malicious accusations of sexual harassment.

### **B. Determining Jurisdiction**

The Formal Complaint must allege sexual harassment as defined under the Title IX Grievance Policy, meaning that the conduct that is the subject of the complaint must have occurred on or after August 14, 2020 and (a) meet the definition of sexual harassment as defined in the Title IX Grievance Policy, (b) have occurred on campus, within a program or activity, or in a building owned or controlled by a student organization that is officially recognized by the University, (c) have occurred in the United States, (d) and, at the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University, including as an employee. A complaint may also be filed by the Title IX Coordinator(s) who has received a report of sexual harassment.

### **C. Initial Assessment & Preliminary Interview**

1. Upon receiving a notice of allegations of sexual harassment, a Title IX Coordinator will assess the allegation(s) and invite the Complainant to a preliminary interview to review allegation(s), to discuss the formal complaint process and Alternative Resolution process, if applicable, and discuss appropriate supportive measures and interim protections, if applicable.
2. At the conclusion of the preliminary interview, the Title IX Coordinator(s) will determine, in consultation with the Complainant, the appropriate resolution route, which may include:
  - a. No further action;

- b. Alternative Resolution process<sup>1</sup>; or
  - c. The initiation of the Formal Complaint and formal grievance process.
- 3. The formal grievance process begins upon signing the Title IX intake form, which designates the filing of the Formal Complaint. This form must be physically or digitally signed and dated by the Complainant and/or Title IX Coordinator(s).
- 4. If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator(s) may determine a Formal Complaint is necessary. The University will inform the Complainant of this decision in writing, and the Complainant need not participate in the process further but will receive notices issued under the Title IX Grievance Policy and this process.
- 5. The timeframe for the Title IX Grievance Process begins with the date the Title IX intake form is signed by the Complainant or the Title IX Coordinator acting on behalf of the Complainant. The Grievance process will be concluded within a reasonably prompt manner, and no longer than 120 business days. The Process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
- 6. A Complainant who files a formal complaint may elect, at any time, to address the matter through the University's Alternative Resolution Process, if applicable. [See Appendix C]
- 7. A Formal Complaint does not need to be filed with OIED to receive supportive measures and interim protections.

#### **D. Consolidating Complaints**

The University may consolidate formal complaints alleging covered 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 covered sexual harassment arise out of the same facts or circumstances.

#### **E. Allegations Potentially Falling Under Two Policies**

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied to investigation and adjudication of only the allegations that constitute covered sexual harassment.

#### **F. Dismissal of Formal Complaint**

- 1. **Mandatory Dismissal:** If after the initiating of a formal complaint, it is discovered that the conduct alleged does not occur in the University's jurisdiction, the Title IX Coordinator(s) must notify the Complainant(s) and Respondent(s) (collectively referred to as "parties" herein) that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy.
- 2. **Discretionary Dismissal**

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<sup>1</sup>Alternative Resolution may not be offered in matters of sexual assault or in cases where a student is filing a complaint of sexual harassment against a University employee.

The Title IX Coordinator(s) may dismiss a formal complaint brought under the Title IX Grievance Policy, or any specific allegation raised within that Formal Complaint, at any time during the investigation or hearing, if:

- a. A Complainant notifies the Title IX Coordinator(s) in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- b. The Respondent is no longer enrolled in or employed by the University; or,
- c. If specific circumstances prevent the University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

### **3. Notice of Dismissal**

Upon reaching a decision that the Formal Complaint will be dismissed, the University will promptly send written notice of the dismissal of the Formal Complaint or the specific allegations dismissed within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties their University email accounts. It is the responsibility of parties to maintain and regularly check their email accounts. A party may appeal a dismissal determination using the process set forth in “Appeals,” below.

Upon dismissal for the purposes of Title IX, the University retains discretion to address allegations under other University Policies and procedures.

## **G. Notice Requirements During Formal Complaint Process**

### **1. Notice of Allegations**

The Title IX Coordinator(s) will draft and provide the Notice of Allegations to the parties to the allegations of sexual harassment. Such notice will occur as soon as practicable, after the University receives a Formal Complaint of the allegations, if there are no extenuating circumstances. The parties will be notified via their University email accounts if they are a student or employee, and by other reasonable means if they are neither.

The Notice of Allegations will include the following:

- a. Attachment or hyperlink to the University’s Title IX Grievance Policy and Process, including any Alternative Resolution process, if applicable.
- b. Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the Complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.
- c. A statement 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.
- d. A statement that the parties may have an advisor of their choice throughout the process, who may be, but is not required to be, an attorney.
- e. A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which

the University does and does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source.

- f. A statement that no employee or student who in good faith files a report, provides information for an investigation, or testifies in any proceeding under this Policy shall be subjected to adverse employment or educational consequences based upon such involvement or be the subject of retaliation; and shall inform the parties of any provision in the University's' Student Code of Conduct (or employees policies) other University policy, including but not limited to knowingly making false statements and retaliation.

## **2. Ongoing Notice**

If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Policy, the University will notify the parties whose identities are known of the additional allegations via their University email accounts or other reasonable means. The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

## **3. Notice of Meetings and Interviews**

The University will 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 a party, with sufficient time for the party to prepare to participate.

## **4. Delays**

Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator) provided that the Title IX Coordinator determines that the request is reasonable. The Title IX Coordinator(s), or designee shall have sole judgment to grant further pauses in the Process.

# **H. Investigation/Grievance Process**

## **1. General Rules of Investigations**

- a. The Title IX Coordinator(s) and/or an investigator(s) will perform an investigation within a reasonably prompt timeframe after issuing the Notice of Allegations. The Grievance process will be concluded within 120 business days
- b. The University, and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the University and does not indicate responsibility.
- c. The University cannot access, consider, or disclose medical records without a waiver from the party (or parent/guardian, if applicable) to whom the records belong or of whom the records include information. The University will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses,

and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

## **2. Advisors**

### **a. Investigation:**

Students and employees<sup>2</sup> who are complainants and/or respondents have the right to be accompanied by an advisor during the investigation although it is not mandatory. The advisor may be any individual of the parties' choice, including, a lawyer, a family member, faculty or other employee. Advisors may attend meetings with the party but shall not answer questions on behalf of the party during investigative interviews. Advisors may assist a party during the investigation, submit evidence for the party, inspect and review evidence, prepare and submit responses to the investigator, respond to charges filed against the student, attend live hearings, and file an appeal. Employees who are represented by a collective negotiations unit may have a Union representative present at all stages of the complaint process.

### **b. Title IX Hearing:**

All complainants and respondents must have an advisor present during the Hearing. Any party who has not selected an advisor for the hearing shall be provided an advisor by the Title IX Coordinator, or designee, to conduct cross examination for the party at the hearing. Advisors shall be subject to the University's Rules of Decorum and may be removed upon violation of those Rules. See Appendix A.

## **3. Inspection and Review of Evidence**

- a. Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to the conclusion of the investigation. The names and other identifying information of individuals in the report may be redacted if required by the Family Educational Rights and Privacy Act ("FERPA").
- b. All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.
- c. Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:
  - Evidence that is relevant, even if that evidence does not end up being relied upon by the University in making a determination regarding responsibility;
  - Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.
- d. The University will send to the parties the evidence made available for each party and each party's advisor, if any, to inspect and review through an electronic format

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<sup>2</sup> Weingarten rights permit union-represented employees, upon request, to have their representative present during an interview that the employee reasonably believes could lead to discipline. The employee may have their representative as an advisor or in addition to an advisor.



or a hard copy. The University is not under obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

- e. The parties will have ten (10) days to inspect and review the evidence and submit a written response by email to the investigator, citing any further information, evidence, or witnesses that they would like considered. The investigators will consider the parties' written responses before determining that fact-finding is complete. If neither party submits a written response, fact-finding is determined to be complete. Any new information that is relevant to the investigation will be revealed to both the Complainant and the Respondent.
- f. The University will provide the parties up to ten (10) days to provide a response, after which the investigator will not accept a late submission.
- g. The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. Parties and their advisors must keep the evidence confidential and not share it with anyone except for the purpose of gathering and presenting relevant evidence to provide to the investigator within the 10-day period. The Title IX Coordinator or other appropriate party will address any violation of the confidentiality agreement as applicable.
- h. Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

#### **I. Investigative Report**

- 1. The Title IX Coordinator(s) serving as investigators and/or an investigator designated by the Title IX Coordinator(s) will draft an Investigative Report. The report will summarize the relevant exculpatory and inculpatory evidence, and findings of credibility will be noted. The report shall be provided to the Complainant, Respondent and their advisors, if any, in electronic format or hard copy for review at least ten (10) days prior to the hearing in an electronic format or a hard copy for each party's review and written response.
- 2. The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a summary of that evidence. The Respondent, Complainant and their advisors must keep the investigator's report confidential and not share it with anyone. Failure to abide by this confidentiality obligation may subject the Complainant, Respondent and advisor, if any, to disciplinary action by the University.
- 3. The investigator may redact information not directly related or relevant to the allegations from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

#### **J. Live Hearings**

##### **1. Pre-Hearing Preparation**

- a. The Title IX Coordinator(s) or designee will prepare all parties, and their advisors, for participation in the live hearing.

- b. Prior to the live hearing, employees may receive a Preliminary Notice of Disciplinary Action (“PNDA”) issued by Human Resources, as applicable based on their contractually negotiated agreements.
- c. The Title IX Coordinator(s) or designee will review and coordinate logistics for the live hearing including, determining availability of all relevant parties, scheduling, location and access to technology.
- d. The Title IX Coordinator(s) or designee will ensure any evidence inspected and reviewed by the parties will be available at the live hearing, including for purposes of cross-examination.
- e. The Title IX Coordinator(s), or designee will serve as silent observer during the live hearing process as a policy, process, and compliance advisor only. The Title IX Coordinator(s) or designee will not weigh-in on decision making, matters of relevance, or questioning phase, but may answer questions related to University policies, procedures, and other relevant state, federal or local laws.
- f. Parties and/or their advisors shall prepare questions for cross-examination and email them to the Title IX Coordinators at least five (5) business days prior to the live hearing. The Title IX Coordinators will include them with the evidence and other material provided to the Hearing Chair.

## **2. General Rules of Hearings**

- a. The live hearing 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 through video conference options. This technology will enable participants simultaneously to see and hear each other. Any party may request that the entire hearing be held virtually, and the University must grant that request. At its discretion, the University may delay or adjourn a hearing based on technological errors not within a party’s control.
- b. All proceedings will be recorded through audio recording. That recording will be made available to the parties for inspection and review.
- c. Prior to the live hearing, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn.
- d. The University may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a live hearing. If so, the University will notify all participants and endeavor to accommodate all participants’ schedules and complete the hearing as promptly as practicable.
- e. As a general rule, no new evidence or witnesses may be submitted during the live hearing.

## **3. Participants in the Live Hearing**

- a. Live hearings are not public, and participation in the hearing will be limited to participants invited to the hearing by the Title IX Coordinator. All participants in the live hearing shall be subject to the University’s Rules of Decorum. *See Appendix A.*
- b. Parties cannot waive the right to a live hearing. The University may still proceed with the live hearing in the absence of a party and may reach a determination of responsibility in their absence.
- c. The University will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party’s participation.

- d. Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing and be free from retaliation.
- e. The Hearing Chair cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.

#### **4. The Hearing Chair**

- a. The Hearing Chair will not have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, and will not decide on the appeals in the case.
- b. The Hearing Chair shall not have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the parties to the particular case.
- c. The Hearing Chair will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Complainants, and any technology to be used at the hearing.
- d. The parties will have an opportunity to raise any objections regarding the Hearing Chair's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

#### **5. Live Hearing Procedures**

- a. The Hearing Chair will open and review the rules and expectations for the hearing.
- b. The parties will be given the opportunity to provide opening statements.
- c. The Hearing Chair will have the opportunity to ask questions of the parties and witnesses.
- d. Parties will be given the opportunity for live cross-examination.
- e. During the parties' cross-examination, the Hearing Chair will have the authority to pause cross-examination at any time for the purposes of asking its own follow up questions and at any time necessary in order to enforce the established Rules of Decorum.
- f. Should a party or the party's advisor choose not to cross-examine a party or witness, the party shall affirmatively waive cross-examination through a written or oral statement to the Hearing Chair. A party's waiver of cross-examination does not eliminate the ability of the Hearing Chair to review and rely on statements made by the party.

#### **6. Live Cross-Examination Procedure**

- a. The parties are not permitted to conduct cross-examination; it must be conducted by their advisor. As a result, if a party does not select an advisor, the University will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- b. Each party's advisor may conduct live cross-examination of the other party or parties and/or witnesses. During this live-cross examination the advisor may ask the other party or parties and/or witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.
- c. Before any cross-examination question is answered, the Hearing Chair may make a determination as to whether the question is relevant. [See Appendix B]. Cross-examination questions that are duplicative of those already asked, including by the Hearing Chair may be deemed irrelevant if they have been asked and answered.
- d. If a party does not attend the hearing, the party's advisor may appear and conduct cross-examination on their behalf.

## **7. Review of Recording**

The recording of the hearing will be available for review by the parties within 10-14 business days unless there are any extenuating circumstances.

## **K. Standard of Proof & Determination**

Standard of Proof – Preponderance of the Evidence

The University uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of Formal Complaints covered under this Policy. This means that the investigation and/or hearing determine whether it is more likely than not that a violation of the Policy occurred.

### **1. General Considerations for Evaluating Testimony and Evidence**

- a. While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Hearing Chair.
- b. The Hearing Chair shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.
- c. Generally, credibility judgments should rest on the plausibility of testimony, the consistency of testimony, and its reliability in light of corroborating or conflicting testimony or evidence.
- d. Credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.
- e. The Hearing Chair will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.
- f. Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.
- g. The University will allow parties to call "expert witnesses" for direct and cross examination. While the expert witness will be allowed to testify and be crossed as required by the Final Rule, the Hearing Chair will afford lower weight to non-factual testimony of the expert relative to fact witnesses. In addition, any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is

the subject of cross examination and regardless of whether all parties present experts as witnesses.

- h. The University will allow parties to call character witnesses to testify. The Hearing Chair will be instructed to afford very low weight to any non-factual character testimony of any witness.
- i. The University will admit and allow testimony regarding polygraph tests (“lie detector tests”) and other procedures that are outside of standard use in academic and non-academic conduct processes. The Hearing Chair will afford lower weight to such processes relative to the testimony of fact witnesses.
- j. Where a party or witness’ conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Hearing Chair may draw an adverse inference as to that party or witness’ credibility.

## **2. Determination Regarding Responsibility**

- a. The written Determination Regarding Responsibility will be issued by the Hearing Chair simultaneously to all parties through their University email account, or other reasonable means as necessary.
- b. The Determination will include:
  - i. Identification of the allegations potentially constituting covered sexual harassment;
  - ii. 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;
  - iii. Findings of fact supporting the determination;
  - iv. Conclusions regarding application of the code of conduct, collective negotiation agreement, and/or University policies and whether the Respondent has or has not violated.
  - v. For each allegation:
    - A statement of, and rationale for, a determination regarding responsibility;
    - Any disciplinary sanction imposed on the Respondent<sup>3</sup>; and
    - A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient’s education program or activity will be provided by the recipient to the Complainant
  - vi. The University’s procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in “Appeal”).

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<sup>3</sup> If an employee is found to be in violation of the Title IX Policy, the matter will be referred to Human Resources to determine sanctions. Thereafter, if the sanction warrants, the Respondent employee will receive a Preliminary Notice of Discipline (“PND”), which will include a description of the sanction they may be subject to and information on appealing the sanction.

3. **Timeline of Determination Regarding Responsibility**

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the University within ten (10) business days of the completion of the hearing.

4. **Finality**

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 consistent with the procedures and timeline outlined in “Appeals” below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

**L. Appeals of Determination & Sanctions**

1. Both Complainants and Respondents have the right to appeal (1) a dismissal of a Formal Complaint, or any allegations therein and (2) a determination regarding responsibility.
2. To appeal, a party must submit their written appeal to the Title IX Coordinator within five (5) business days of being notified of the decision, indicating the grounds for the appeal.
3. The Title IX Coordinator will submit the appeal to the Appeals Officer. The Appeals Officer, or their designee, shall not have served as the Title IX Coordinator, Title IX investigator, Hearing Chair, or advisor to any party in the case.
4. Grounds for appeal of the dismissal of a Formal Complaint and determination of violation are limited to the following:
  - a. Procedural irregularity that would change the outcome;
  - b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that would change the outcome of the matter. A party’s failure to attend a hearing or provide information during a hearing does not constitute grounds for appeal on the basis of new information;
  - c. The Title IX Coordinator and/or investigator(s), had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.
5. The original determination and sanction(s) will stand if the appeal is not timely or is not based on the grounds listed above.
6. When a party requests an appeal of the dismissal of a Formal Complaint and/or determination of violation, the other party (parties) will be notified of the appeal and grounds and given an opportunity to respond with a written statement submitted to the Title IX Coordinator within five (5) business days of the notification. The written response must be received by 11:59pm on the fifth business day.
7. The Appeals Officer or their designee will review the appeal and any subsequent responses and render a decision, in writing to all parties, within ten (10) business days of the final submittal deadline.

8. Appeals are not intended to be full re-hearings of the complaint. Appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal.
9. The submission of appeal halts any sanctions until a decision is reached on the appeal. supportive and interim measures, including remote learning opportunities, remain available during the pendency of the appeal.
10. Outcome of appeal will be provided in writing simultaneously to both parties and include rationale for the decision.
11. The decision of the appeal is the final action of the University.
12. Respondent students may only appeal a disciplinary sanction of loss of housing, suspension and expulsion on the basis that it is disproportionate to the policy violation.
13. Respondent employees must follow the appeal process for determinations and sanctions as designated by Human Resources pursuant to their employment status.

## **VII. TRAINING**

The Title IX Coordinator(s), investigators, Hearing Chair, any person who facilitates alternative resolution, and any person who resolves an appeal, shall receive training on the definition of Sexual Harassment, the scope of the Title IX Grievance Policy and Procedures, how to conduct an investigation, how to conduct a hearing, appeal, alternative resolution, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias.

The Hearing Chair shall also receive training on the use of any technology to be used at a live hearing and on the relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators shall also receive training on relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used for training must not rely upon sex stereotypes and must promote impartial investigations and adjudications of formal complaints of Sexual Harassment.

Training materials to the extent permitted must be made publicly available on the University's website.

## **APPENDIX A - Decorum Policy for Title IX Grievance Process Hearings**

### **Purpose of the Rules of Decorum**

Title IX hearings are not civil or criminal proceedings and are not designed to mimic formal trial proceedings. They are primarily educational in nature, and the U.S. Department of Education, writing about Title IX in the Final Rule “purposefully designed these final regulations to allow recipients to retain flexibility to adopt rules of decorum that prohibit any party, advisor or Hearing Chair from questioning witnesses in an abusive, intimidating, or disrespectful manner.” 85 Fed. Reg. 30026, 30319 (May 19, 2020).

At base, these Rules of Decorum require that all parties, advisors of choice, and institutional staff treat others who are engaged in the process with respect.

The rules and standards apply equally to all parties and their advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.

### **Rules of Decorum**

The following Rules of Decorum are to be observed in the hearing and applied equally to all parties (meaning the Complainant and Respondent) and advisors:

1. Parties and advisors will refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
2. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or Hearing Chairs.
3. While an advisor may be an attorney, we expect all advisors to follow these Rules of Decorum.
4. During cross-examination, the party’s advisor must ask questions respectfully & in a neutral tone of the other party in a way that is intended to bring forth further relevant information for the college to use in making its determination in this matter.
5. The advisor may not yell, scream, badger, or physically “lean in” to a party or witness’s personal space. Advisors may not approach the other party or witnesses without obtaining permission from the Hearing Chair.
6. The advisor may not use profanity or make personal attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
7. The advisor may not ask repetitive questions. This includes questions that have already been asked by the Hearing Chair, the advisor in cross-examination, or in direct testimony. When the Hearing Chair determines a question has been “asked and answered” or is otherwise not relevant, the advisor must move on.
8. Parties and advisors may take no action at the hearing that a reasonable person would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.



## **Warning and Removal Process**

The Hearing Chair shall have sole discretion to determine if the Rules of Decorum have been violated. The Hearing Chair will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the Hearing Chair shall have the discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the Hearing Chair removes a party's advisor, the party may select a different advisor of their choice, or accept an advisor provided by the institution for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the hearing, maybe anticipated should an advisor be removed. A party cannot serve as its own advisor in this circumstance.

The Hearing Chair shall document any decision to remove an advisor in the written determination regarding responsibility.

## **Removal of Advisor from Live Hearings**

For flagrant, multiple, or continual violations of the decorum process, in one or more proceedings, advisors may be prohibited from participating in future proceedings at the institution in the advisor role on a temporary or permanent basis.

## **Relevant Questions Asked in Violation of the Rules of Decorum**

Where an advisor asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning-in to the witness or party's personal space, the question may not be deemed irrelevant by the Hearing Chair simply because of the manner it was delivered. Under that circumstance, the Hearing Chair will notify the advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the advisor (or a replacement advisor, should the advisor be removed for violation of the Rules).

## **APPENDIX B – Guide for Determining Relevance**

### **Guide for Determining Relevance**

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 Hearing Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

#### **1. What is a Relevant Question?**

##### **a. Plain and Ordinary meaning**

Basically, a relevant question will ask whether the facts material to the allegations under investigation are more or less likely to be true. A question not directly related to the allegations will generally be irrelevant.

##### **b. Aid Hearing Chair**

Relevant decisions should be made on a question-by-question basis, looking narrowly at whether the question seeks information that will aid the Hearing Chair in making the underlying determination.

The relevance decision should not be based on who asked the question, their possible (or clearly stated) motives, who the question is directed to, or the tone or style used to ask about the fact. Relevant decisions should not be based in whole or in part upon the sex or gender of the party for whom it is asked or to whom it is asked, nor based upon their status as Complainant or Respondent, past status as Complainant or Respondent, any organizations of which they are a member, or any other protected class covered by federal or state law (e.g. race, sexual orientation, disability).

##### **c. Relevant but Abusive**

If a question is relevant but offered in an abusive or argumentative manner, the Hearing Chair has the discretion to ask the advisor to rephrase the question in an appropriate manner, consistent with the institution's decorum policy for hearings.

##### **d. Prejudicial value can outweigh probative value if relevant**

Much of the content within these hearings may be considered sensitive and/or embarrassing by parties or advisors. However, relevant questions need to be considered even if a party or advisor believes the danger of unfair prejudice substantially outweighs their probative value. Only irrelevant questions (detailed below), including about the Complainant's prior sexual history, may be excluded.

#### **2. What is an Irrelevant Question?**

- a. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
  - i. 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
  - ii. 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.
- b. Information protected by legally recognized privilege is irrelevant.

- c. Questions that constitute, or seek disclosure of, information protected under a legally recognized privilege are irrelevant. Individuals with legal privilege may include medical providers (physician, dentist, podiatrist, chiropractor, and nurse), psychologists, clergy, rape crisis counselors, and social workers.
- d. Questions that seek information about any party's medical, psychological, and similar records are irrelevant unless the party has given voluntary, written consent to disclose Medical Records.
- e. Duplicative Questions may be irrelevant - Questions that repeat, in sum or substance, questions already asked by the Hearing Chair prior to cross-examination, or by a party's advisor during cross-examination (and if part of your process, during direct examination), may be ruled duplicative, and therefore irrelevant.

### 3. Examples of Determinations

The Hearing Chair need only provide a brief explanation of the determination, which will ordinarily consist of one of the following statements depending on the situation:

- a. Generally probative questions
  - i. The question is relevant because it asks whether a fact material to the allegations is more or less likely to be true.
  - ii. The question is irrelevant because it asks about a detail that does not touch on whether a material fact concerning the allegations is more or less likely to be true.
  - iii. The question is irrelevant because it is duplicative of a question that was asked and answered.
- b. Question about Complainant's Prior Sexual Behavior or Sexual Predisposition
  - i. The question is relevant because although it calls for prior sexual behavior information about the Complainant, it meets one of the two exceptions to the rape shield protections, and it tends to prove that a material fact at issue is more or less likely to be true.
 

Exception one: The question is asked to prove that someone other than the Respondent committed the conduct alleged by the Complainant.

Exception two: The question concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is asked to prove consent.
  - ii. The question is irrelevant because it calls for prior sexual behavior information about the Complainant without meeting one of the two exceptions to the rape shield protections.
- c. Question regarding Privileged Information
  - i. The question is irrelevant because it calls for information shielded by a legally-recognized privilege.
  - ii. The question is relevant because, although it calls for information shielded by a legally recognized privilege, that privilege has been waived in writing, and the question tends to prove that a material fact at issue is more or less likely to be true.
- d. Questions about Undisclosed Medical Records

- i. The question is irrelevant because it calls for information regarding a party's medical, psychological, or similar record without that party's voluntary, written consent.
- ii. This question is relevant because although it calls for a party's medical, psychological, or similar records, that party has given their voluntary, written consent to including this material, and it tends to prove that a material fact at issue is more or less likely to be true.

## Appendix C – Alternative Resolution

Alternative Resolution is a voluntary process within the Title IX Grievance Process for Sexual Harassment Complaints. The Alternative Resolution permits methods (i.e. facilitated conversations, shutting, circling, and mediation) of resolving incidents when the Complainant does not want a formal investigation or when the Title IX Coordinator(s) may seek to resolve certain allegations through an Alternative Resolution process involving the parties.

Alternative Resolution can take place after the preliminary assessment, in place of the formal investigation, or any time before the hearing takes place, if both parties consent and the Title IX Coordinator agrees that it is appropriate. Before starting this process, the Title IX Coordinator(s) will notify the parties in writing that each has the right to end the Alternative Resolution process at any time.

The Alternative Resolution process allows a Respondent in a case to accept responsibility for their behavior and/or potential harm. The Alternative Resolution process is designed to eliminate the Prohibited Conduct, prevent its recurrence, and remedy its effects in a manner that meets the needs of the Complainant while still maintaining the safety of the overall campus community.

At the conclusion of the Alternative Resolution process, if the parties are satisfied with the proposed resolution and the Title IX Coordinator(s) believes the resolution satisfies the University's obligation to provide a safe and non-discriminatory environment for all, the resolution will be implemented, the disciplinary process will be concluded, the matter will be closed, and both parties will be provided with written notice of the resolution. The Alternative Resolution is not subject to appeal once all parties indicate their written agreement to all resolution terms and the parties cannot thereafter request a formal investigation of the same matter. When the parties cannot agree on all terms of the Alternative Resolution, the Formal Grievance Process may either commence or resume.

### **Alternative Resolution Requirements for Participation**

The Alternative Resolution process will only be used at the agreement of **both** the Complainant and Respondent and under the direction of the Title IX Coordinator(s), or designee.

In order for the Alternative Resolution process to be appropriate **both** parties must have an understanding and agree on the necessary elements of the process. Both the Complainant and Respondent will have to agree to established terms should they wish to participate in the alternative resolution process.

**The University will not offer or facilitate an Alternative Resolution process to resolve allegations that an employee sexually harassed a student.**

## Appendix D: Range of Sanctions for Student Respondents

The determination of disciplinary sanctions for violations requires careful review of numerous factors and circumstances. Some factors are specific to the Respondent, such as a prior history of misconduct, evidence of a pattern of behavior, and/or multiple violations within the same occurrence. Other factors relate to the circumstances surrounding or contributing to the offense at issue, such as the severity of the incident, the intentionality or premeditation of the behavior, and/or whether the conduct involved physical violence, a minor, and/or the use of a weapon. Please note that a student's cumulative conduct history, as well as the sanctions assessed to other students in similar cases, will be considered for the assignment of sanctions.

The following sanctions may be assigned for violations of the Title IX Policy. These sanctions may be imposed separately or in conjunction with other sanctions.

1. *Official Warning* — The student receives notification from the Title IX Coordinator or designee, indicating that a violation of the Title IX Grievance Policy has occurred and warning that any subsequent violation may be treated more seriously.
2. *Restorative Practices* – The student may be offered an opportunity to learn about WPU's community expectations for minor policy violations and correct disruptive behaviors for first time violations without incurring sanctions or a conduct record.
3. *Educational Sanctions* — Educational sanctions may be imposed in an effort to promote student learning about a particular topic or policy violation. For example, students may have community service projects or educational workshops assigned.
4. *Restitution* — The student is required to make payment to the University or to other persons, groups, or organizations for damages incurred as a result of violations of the Student Code of Conduct.
5. *Order of No Contact* – The student and their friends and acquaintances may be restricted from having any contact with another member of the University community. This sanction can include but is not limited to the exclusion from any University building or property, communication restrictions involving the University member, whether on University property or not, and placing responsibility on the student and their friends and acquaintances to maintain the communication restriction regarding the designated University member.
6. *Building Restrictions* – The student may lose access privileges into any university building, including one or several residence halls, when the behavior exhibited inside such a location has caused a safety concern.
7. *Campus Life Probation* – A defined period of time whereby any registered student is given an opportunity to modify behavior or risk more severe sanctions. Any subsequent violation of the Student Sexual Misconduct and Non-Discrimination Policy or Student Code of Conduct, while on Campus Life Probation, may result in further disciplinary action.
8. *Extracurricular Leadership Suspension* – A student placed on Extracurricular Leadership Suspension cannot hold a leadership position for any extracurricular group, club, team or activity for a defined period time.
9. *Extracurricular Participation Suspension* – A student placed on Extracurricular Participation Suspension cannot participate in any extracurricular group, club, team or activity for a defined period of time.
10. *Administrative Relocation* – The student can be required to relocate to a new housing assignment during or after the conclusion of the hearing process. This sanction is utilized to ensure the safety and peace of mind of the residential community at the discretion of the Director of Student Conduct or Office of Residence Life. The student is responsible for any charges that may result from relocating from one residence hall to another.
11. *Loss of Campus Housing* – The student may not reside in, visit, or enter any of the residence halls on campus. This includes entrances, foyers, lounges, rooms, hallways and common areas. The

- student is not entitled to any refund of campus housing and/or meal plan fees after the scheduled refund dates.
12. *Suspension from the University* — The student may not be a registered student, be present on campus, or attend University sponsored events for any reason while suspended from the University. The minimum length of a suspension is one semester; there is no maximum. The student is not entitled to a refund of any tuition or fees after the scheduled refund dates.
  13. *Expulsion from the University* — The student may not ever again be a registered student, be present on campus, or attend University sponsored events. The student is not entitled to a refund of any tuition or fees after the scheduled refund dates.

If good cause exists, as determined by the Title IX Coordinator or designee and in consultation with appropriate University officials, any and all of the above sanctions can be imposed on the student on an interim basis pending an investigation, hearing, and final resolution of any pending charges.

## Appendix E: Range of Sanctions for Employee Respondents

Range of Sanctions that may be imposed on Employee Respondents found responsible:

*Employee Counseling* - Informs the employee of the need to correct his/her behavior to comply with rules and/or performance. Advises employee of potential disciplinary action(s) if the unacceptable conduct or performance is repeated. It is accompanied by a written memorandum detailing the specifics of the counseling session. **This is not an official discipline and is not subject to appeal by the employee.** However, it is a forewarning.

*Written Reprimand* - A written notice to the employee that the conduct or performance is unsatisfactory for a specific reason. The notice must state that it is a reprimand and should warn the employee that any recurrence may result in more severe disciplinary action, including, where appropriate, the possibility of separation from employment with the University.

*Fine(s)* – Fines can be imposed as a means of restitution or in lieu of a suspension without pay where attendance is at issue.

*Demotion* – A downgrade in the title

*Record Suspension* – Documented suspension for progressive disciplinary purposes; in lieu of suspension without pay where attendance is at issue or as a result of an agreement

*Suspension without Pay* – Temporary removal of employee without with pay

*Removal/Termination*: Permanent separation from employment



