

WCU Policy 129 Title IX Sexual Harassment Procedures - Combined

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University Policy 129 Title IX Sexual Harassment Policy – Procedure 129.1

Definitions

Initially approved August 14, 2020

Procedure Topic: Definitions

Authority: Title IX Coordinator

- A. These definitions shall apply to University Policy 129 Title IX Sexual Harassment Policy and any related procedure.
1. “Advisor” is any individual who provides the Complainant or Respondent support, guidance, or advice.
 2. “Appeal Officer” shall be the person(s) appointed by the Chancellor to review an appeal pursuant to this Policy and Procedure.
 3. “Calendar Days” shall mean all days that the University is in session including weekends during in session periods, but excluding University holidays.
 4. “Chair” shall mean the chairperson of a Title IX Board.
 5. “Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
 6. “Confidential Resources” are offices or agencies, both on campus and off, staffed by trained professionals who can provide counseling, information and support in a confidential setting. Confidential resources will not share information about an individual (including whether that individual has received services) without the individual’s express permission, unless there is a continuing threat of serious harm to the individual or to others or there is a legal obligation to reveal such information (for example, suspected abuse or neglect of a minor). These professionals are available to help an individual make a report to the University of conduct that violates this policy.
 7. “Consent” means approval and permission to engage in mutually agreed upon sexual activity demonstrated by clear actions, words, or writings. Consent is further clarified in Procedure 129.3.
 8. “Decision-Maker” shall mean the person(s) serving on the Title IX Board pursuant to this Policy and Procedure and who shall make a determination regarding a finding of Responsible or Not Responsible as-well-as any sanction.
 9. “Document Filed by a Complainant” means a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by the University) that contains the Complainant’s physical or electronic signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.

10. “Formal Complaint” means a document filed by a Complainant or signed by the Title IX Coordinator alleging conduct in violation of this Policy against a Respondent and requesting that the University investigate the allegation. 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 school with which the formal complaint is filed. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the school.
11. “Employee” means any faculty member, as defined by University of North Carolina (UNC) Policy Manual and the Code and University policy; staff member, as defined by UNC Policy Manual and the Code and University policy; and any third-party contractor who has access to the campus and/or students, faculty, and staff of the University.
12. “Formal Investigation” means an investigation initiated by the Title IX Coordinator or designee under the guidance and control of the University Investigator, or designee.
13. “Incapacitation” means a person cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the ability to reasonably understand the situation.
14. “Preponderance of the Evidence” is the standard of evidence used for Title IX Grievance Hearings held pursuant to this Policy. This means that it is more likely than not that the Respondent(s) violated the Policy.
15. “Responsible Employee” shall be a University employee who is designated by and obligated to report incidents of reported sexual harassment to the Title IX Coordinator.
16. “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment in violation of this Policy and Procedure.
17. “Report” means information provided to the Title IX Coordinator, University Police, a Responsible Employee, or the Office for Civil Rights that does not meet the definition of a Formal Complaint, but which the University may, in its discretion, review and that may result in a Formal Complaint.
18. “Sexual Harassment” means conduct on the basis of sex that satisfies one or more of the following:
 - a. Quid pro quo—an employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;

- b. 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 recipient's education program or activity; or
 - c. "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).
19. "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.
20. "Title IX Board" shall be composed of faculty, staff, or independent contractor(s), one of whom shall be the Chair.
21. "Title IX Grievance Process" shall refer to the entire process that begins with the filing of a Formal Complaint with the Title IX Coordinator and shall conclude with the resolution of a final appeal by either party.
22. "Title IX Grievance Hearing" shall refer to the proceeding in which charges are brought against a Respondent or Respondents of an alleged violation of this Policy.
23. "University Investigator" also referred to as the "Investigator" is an individual who has received specialized training in conducting sexual harassment investigations, and has been assigned by the Title IX Coordinator to investigate an alleged violation of this Policy. Investigators are neutral fact finders who, during the course of the investigation, typically conduct interviews with the Complainant, the Respondent, and third-party witnesses; take custody of any physical or electronic records or documents to be included in an investigation report; visit and take photographs at each relevant site; and, where applicable, coordinate with Campus Police or other law enforcement agencies. Investigators prepare a written investigation report to be used in reaching a resolution.
24. "University Police Department" or "UPD" shall mean the Western Carolina University campus-based law enforcement unit.

University Policy 129 Title IX Sexual Harassment Policy – Procedure 129.2 Reporting

Initially approved August 14, 2020

Procedure Topic: Reporting an incident of Title IX Sexual Harassment

Authority: Title IX Coordinator

I. Procedure Statement: Any person (whether or not alleged to be the victim) may report Title IX Sexual Harassment. The University will limit disclosure of information included in a non-confidential report to those individuals involved in the University's response to the report and to legally required or permitted disclosures.

II. How to Report

- a. Report to Campus Police: Western Carolina University strongly encourages all members of its community to report any and all criminal violations to the University Police. University Police can assist with personal safety, medical attention, preservation of evidence, contacting support resources and/or filing a police report. University Police will record the report for Clery Act purposes.

University Policy
114 E University Way
Phone: 828.227.7301
Emergencies: 828.227.8911

- b. Report to Title IX Coordinator: All reported incidents of Title IX Sexual misconduct involving students and/or employees are reviewed by the Title IX Coordinator. The Title IX Coordinator will provide the Complainant with a written explanation of their rights and options under this Policy, including available support measure and an explanation of the University's complaint resolution procedures, per this policy. The Title IX Coordinator will report the alleged incident to University Police for Clery Act purposes, but may refrain from disclosing personally identifiable information about the Complainant or Respondent to University Police at your request.

Ivy Gibson
Title IX Coordinator
igibson@wcu.edu
828.227.3036

- c. Report to a Responsible Employee: Reports made to a Responsible Employee will be referred to the Title IX Coordinator for review. A Responsible Employee who receives a report **must** report all relevant details about the reported misconduct to the Title IX Coordinator. Be advised, Responsible Employees should not be considered confidential resources. To find a current list of Responsible Employees, click on this link:

<https://www.wcu.edu/discover/campus-services-and-operations/university-police/clery-act/CampusSecurityAuthority.aspx>

- d. Report to the United States Department of Education Office for Civil Rights: In addition to, or instead of submitting a report to the University, Complainants may file a complaint with the U.S. Department of Education Office for Civil Rights (**OCR**) at any time:

Telephone: (202) 453-6020

Email: OCR.DC@ed.gov

- e. Anonymous Reporting: Any individual may make a report of conduct prohibited of this Policy to the above resources without disclosing their name and without identifying the Respondent, and without requesting any action. However, the University's ability to respond to an anonymous report may be limited depending on the level of information available about the incident or individuals involved.

University Policy 129 Title IX Sexual Harassment Policy – Procedure 129.3 Consent

Initially approved August 14, 2020

Procedure Topic: This procedure will clarify the concept of Consent.

Authority: Title IX Coordinator

- I. Consent is the approval and permission to engage in mutually agreed upon sexual activity demonstrated by clear actions, words, or writing.

- II. Consent cannot be granted when:
 - a. The other party is under the age of legal consent;
 - b. The other party is asleep;
 - c. The other party is incapacitated, as that term is defined by the Policy and Procedures; and/or
 - d. The other party was coerced; intimidated; or threatened with mental or physical force.

- III. Consent is not to be inferred from:
 - a. Silence, passivity, or lack of resistance; and/or
 - b. An existing or previous dating or sexual relationship.

- IV. Consent may be withdrawn at any time and requires an outward demonstration that clearly conveys through understandable words or actions that a party is no longer willing to engage in sexual activity. Once consent is withdrawn, the sexual activity must immediately cease.

University Policy 129 Title IX Sexual Harassment Policy – Procedure 129.4 Confidentiality

Initially approved August 14, 2020

Procedure Topic: Procedure describing the University's responsibilities regarding confidentiality.

Authority: Title IX Coordinator

I. Requests for Confidentiality

Where a formal complaint has not been filed by the complainant or signed by the Title IX Coordinator, the University may honor requests for confidentiality, unless disclosure of identity is necessary to provide a particular supportive measure or to provide a safe and non-discriminatory environment to all members of the University community.

In cases where the Complainant requests confidentiality or requests the University not to take any action in response to a report, the Title IX Coordinator or designee will conduct a preliminary assessment into the reported Policy violation and will balance this request with the University's commitment to providing a safe and non-discriminatory environment to all members of the University community. The Title IX Coordinator or designee will consider many factors when determining whether or not the University can honor the request for confidentiality or no action, including, but not limited to:

- The information provided suggests that the Respondent has committed prior acts and/or suggests an increased risk that Respondent will commit additional acts that would violate this policy or are otherwise violent acts;
- The information provided suggests that the act is part of a larger pattern at a specific location or by a particular group and thus there is an increased risk of future violations of this policy under similar circumstances;
- The reported misconduct was committed by multiple perpetrators;
- The reported misconduct was perpetrated with a weapon;
- The Complainant is a minor;
- The Western Carolina University has other means to obtain relevant evidence (e.g. security camera footage, physical evidence, additional witnesses);
- If the facts warrant issuance of a timely warning.

II. Confidential and Protected Resources

Confidential Resources are those required to keep all information disclosed to them confidential within the legal and ethical bounds of their profession. Reports made to these individuals are confidential and will be referred to Campus Police and the Title IX Coordinator only in the event of a continuing threat to the health or safety of an individual or the campus community.

At Western Carolina University, these individuals may include:

Counseling & Psychological Services
225 Bird Building
Phone: 828-227-7469
Hours: Monday – Friday, 8am-5pm

Off Campus Resources include:

Western NC 24 Hour Crisis Line: (888) 315-2880
National Suicide Prevention Lifeline: (800) 273-8255
Meridian Health Services
P.O. Box 2187
Sylva, NC 28779
Phone: (828) 631-3973
<https://meridianbhs.org>

REACH of Jackson/Macon Co.
1895 Old Murphy Rd.
Franklin, NC 28734
Phone: (828) 369-5544
<https://www.reachofmaconcounty.org/index.html>

The University may recognize some public awareness events, such as “Take Back the Night”, as protected resources. Violations of this Policy disclosed during such events may be made in confidence, meaning that these reports will be shared with the Title IX Coordinator without identifying information and without triggering action by the Western Carolina University with the exception of reports that constitute a continuing threat to the health or safety of an individual or the campus community. Further exceptions include when a Complainant gives consent for identifying information to be reported. Information disclosed through a public awareness event is not considered notice of an act described in this Policy.

University Policy 129 Title IX Sexual Harassment Policy – Procedure 129.5 *Advisors*

Initially approved August 14, 2020

Procedure Topic: Procedure related to advisors.

Authority: Title IX Coordinator

I. Assistance of an Advisor

The Complainant and Respondent may have an advisor of their choice present during any meeting or proceeding related to complaint resolution procedures under this Policy, including meetings related to investigation of the formal complaint. The advisor's role is to provide support, guidance, or advice to the Complainant or Respondent as well as to conduct cross-examination at a live-hearing as outlined in Procedure 129.6. Advisors are not allowed to disrupt any such meeting or proceeding or to speak on behalf of the Complainant or the Respondent, with the exception of cross-examination during any hearing conducted under Procedures, which must be conducted by an advisor and never personally by the Complainant or the Respondent.

The Complainant and Respondent may share with their advisor notices and information provided to them in relation to complaint resolution under this Policy, provided that the advisor shall keep such materials confidential unless the advisor is otherwise authorized to disclose the information contained therein. 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.

At the party's request, the University will provide a list of trained advisors available to assist the party throughout proceedings contemplated by this Policy. Students are not required to choose an advisor from the list of trained advisors. Parties must provide the University Investigator with notice of the identity of their advisor of choice prior to the advisor attending a meeting or proceeding under this Policy, ideally at least one (1) business day in advance.

II. Scheduling Meetings and Proceedings

An advisor's inability to attend a meeting does not constitute an unavoidable conflict that would necessitate rescheduling a meeting or proceeding.

University Policy 129 Title IX Sexual Harassment Policy – Procedure 129.6 Title IX Grievance Process

Initially approved August 14, 2020

Procedure Topic: Title IX Grievance Process

Authority: Title IX Coordinator

I. Initiation of the Title IX Grievance Process

a. Filing a Formal Complaint

Any individual may file a Formal Complaint against a student or Employee for a violation of this Policy. In the event that the Title IX Coordinator, or designee, files a complaint on behalf of an affected individual, the Complainant will be entitled to receive all notifications due to Complainant under this policy, including notification regarding the outcome of the complaint grievance procedures.

To initiate the University's complaint grievance procedures, the Complainant must file a Formal Complaint which must include, at a minimum, the time, place, and type of prohibited act(s) alleged; a factual summary of the reported incident(s); and the name, if known, and/or description, of the Respondent. The Formal Complaint will be reviewed by the Title IX Coordinator or designee. If the details of the Formal Complaint do not fall within this Policy, the complaint will be dismissed pursuant to Section II of this Procedure.

Nothing in this Procedure shall preclude the University from investigating and/or making a finding that a person is in violation of any other University policy or procedure.

b. Consolidation of Formal Complaints

The University may consolidate two or more Formal Complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of Title IX Sexual Harassment arise out of the same facts or circumstances. Where the Title IX 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.

c. Notice of Allegations

Upon the filing of a Formal Complaint(s), the Title IX Coordinator shall issue a notice of allegations to the parties.

- i. The notice of allegation shall be in writing and shall contain the following:

1. A formal complaint was filed;
 2. The process for resolution (formal and informal);
 3. A copy of the policy and related procedures;
 4. Sufficient details known at that time about the allegation (identification of the parties, behavior alleged to violate the Policy, date and location);
 5. The presumption of innocence and/or not responsible;
 6. Determination of responsibility is made at the end of the process;
 7. Parties may have an adviser of their choosing;
 8. Parties can request to inspect and review certain evidence; and
 9. Applicable policy language regarding the prohibition against making false statements.
- ii. The written notice of allegation must be provided before any interview is conducted with the Respondent and the Respondent must be given no less than three (3) calendar days to prepare for the initial meeting.

II. Dismissal of Formal Complaint

- a. The University must investigate the conduct alleged in a Formal Complaint. If the conduct alleged does not constitute Title IX Sexual Harassment; did not occur in the institution's education program or activity; or did not occur against a person in the United States, then the institution **must** dismiss the Formal Complaint with regard to that conduct for purposes of this Policy and Procedure. Such a dismissal does not preclude action under other provisions of the University's Code of Student Conduct or any other University policy or practice, including policies and practices associated with Title VII of the Civil Rights Act.
- b. The University **may** dismiss a Formal Complaint or any allegations therein, if at any time during the investigation or hearing:
 - i. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
 - ii. The Respondent is no longer enrolled or employed by the University;
 - iii. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein; and/or
 - iv. Upon completion of a Formal Investigation, when clear evidence is provided that a complaint is materially false and/or made in bad faith, the Title IX Coordinator may dismiss the complaint prior to a Title IX Grievance Hearing.
- c. Upon a dismissal required or permitted pursuant to subsections II.a. or II.b. above, the University must promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

- d. Dismissal of the Formal Complaint pursuant to subsections II.a. or II.b. above constitutes the conclusion of the Title IX Grievance Process but may not mean the end of any other University process or procedure based on the allegations.
- e. The Title IX Coordinator, or designee, may, in his/her discretion, forward the dismissed Formal Complaint to the Department of Student Community Ethics (for students) or Human Resources and Payroll (for employees) for additional review.
- f. The Complainant and Respondent each have the right to appeal the dismissal decision as outlined in Section III.c.iii of this Procedure.

III. Resolution of a Formal Complaint

- a. Respondent Withdrawal - Should a Respondent choose to withdraw, leave, or voluntarily separate from the University after a Formal Complaint has been filed but before final disposition of the matter, the University may continue to administer this Procedure and any related Policy or, in the alternative, the University may elect to pause the proceedings and shall make note in the student's disciplinary records or the employee's personnel file maintained in Human Resources and Payroll that charges under this Policy and Procedure were pending at the time of withdrawal or separation. If the Title IX Grievance Process is paused, the Complainant will be notified of the change. Subsequently, the Complainant and Respondent will be notified upon resuming the Title IX Grievance Process.
- b. Informal Resolution of a Formal Complaint - Informal Resolution is only available when both the Complainant and Respondent agree to engage in an informal resolution. The Informal Resolution process may not be required by the University or offered unless a Formal Complaint is filed. Informal resolution may, at the discretion of the University, involve a full investigation and adjudication. An informal resolution may be requested at any point prior to reaching a determination regarding responsibility as described in subsection III.c.ii.4. Once an Informal Resolution process has been initiated, any party has the right to withdraw from the Informal Resolution process and resume the Title IX Formal Resolution prior to the conclusion of the Informal process.

Informal Resolution may **not** be offered or facilitated to resolve allegations that an employee engaged in Title IX Sexual Harassment involving or directed at a student.

To engage in Informal Resolution, the University must:

- 1. Provide to the parties a written notice disclosing:
 - a. the allegations;

- b. the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations; and
 - c. any consequences resulting from participating in the informal resolution process, including notice the records that will be maintained and could be shared.
2. Obtain the parties' voluntary, written consent to the informal resolution process. Once obtained, the incident is referred to the Dean of Students, (for students) or Director of Employee Relations, Talent Acquisition & Development or designee (for employees) to finalize the terms of the resolution and facilitate agreed upon sanction(s).

If the parties agree in writing, the conclusion of the Informal Resolution process constitutes the conclusion of the Title IX Grievance Process and is not subject to appeal.

- c. Formal Resolution of a Formal Complaint – The Formal Resolution shall include the following: Investigation; Title IX Grievance Hearing; and any Appeal.

- i. Investigation

1. Depending on the circumstances, the Title IX Coordinator may appoint a single Investigator or a team of Investigators to conduct an investigation contemplated by this Procedure. An external Investigator may be appointed in the event that there are insufficient staff resources to investigate a complaint, there is a legitimate conflict of interest between the available staff Investigators and a party to the complaint, the complaint is particularly complex, or in any other case that the Title IX Coordinator, in their discretion, deems it advisable.
2. The investigation will be conducted in a prompt, fair, thorough, and impartial manner.
3. The Complainant and Respondent will be asked to identify all information they would like the Investigator to review, including any witnesses they would like to be interviewed. The Investigator may identify additional witnesses that they, in their discretion, would like to interview. Decisions about interviews and collection and evaluation of information are at the discretion of the Investigator and best reasonable efforts to contact and interview witnesses will be made. The Investigator may need to interview the Complainant and Respondent multiple times during the investigation. Investigators are authorized to contact any relevant individuals and to access any relevant records not otherwise prohibited by legal protections of privilege or confidentiality.
4. The Investigator will prepare an initial investigation report (***Initial Report***), including as exhibits any relevant documentation.
 - a. The Initial Report will be emailed to the Complainant, Respondent, and their respective advisors. The parties will be provided a minimum of ten (10)

business days to review the Initial Report and provide a written response to the Investigator. This Initial Report may only be shared with the Title IX Coordinator, Decision-Maker, Title IX Hearing Board members, and anyone that the Title IX Coordinator deems has a need to know.

- b. After receiving party responds or the deadline for response has passed, the Investigator may include newly provided relevant information and submit the final investigation report (***Final Report***) and exhibits to the Dean of Students, or designee (when the Respondent is a student), or Associate Vice Chancellor, Human Resources & Payroll, or designee (when the Respondent is anyone other than a student), for either informal resolution or to proceed to a Title IX Grievance Hearing.
 - c. The length of the investigation depends on the circumstances of each case, but the University will make every effort to complete an investigation in thirty (30) calendar days, not including Western Carolina University holidays or days when the University is not in session.
5. At the conclusion of the Investigation and if supported by the Investigation, the Dean of Students, or designee (when the Respondent is a student), or Associate Vice Chancellor, Human Resources & Payroll, or designee (when the Respondent is anyone other than a student), will issue a Final Investigatory Packet, to the Complainant and Respondent at least ten (10) days before the Title IX Grievance Hearing. The Final Investigatory Packet will include the following:
- a. written notice to proceed to a Title IX Grievance Hearing;
 - b. date, time and location of the scheduled Title IX Grievance Hearing;
 - c. names of Title IX Board members for the purpose of identifying potential conflict of interest(s);
 - d. list of possible advisors; and
 - e. instructions on how to review the contents of the Final Report and any other relevant documentation that will be provided for the hearing.¹

ii. Title IX Grievance Hearing (Live Board) process

1. Live Hearing - A live hearing is required and may be conducted with all parties present in the same room, fully virtual, or a hybrid model where the board gathers in person and all other parties participate virtually. Regardless of the modality, all parties must be provided the opportunity to see and hear each other. Reasonable accessibility accommodations will be made upon request in collaboration with the University's Office of Accessibility Resources.

¹ Relevant documentation will generally be provided electronically to the Respondent, Complainant and their respective advisors. A hard copy will be provided upon request only and made available within 2 business days of the request for the party to pick up.

2. Pre-hearing meeting - Both parties may schedule a pre-hearing meeting with the Title IX Coordinator or designee, where they may be accompanied by an advisor. The purpose of this meeting will be to review the hearing procedures, provide a copy of the procedures, and answer any questions or concerns either party has regarding the Title IX Grievance Hearing process.
3. Relevant Evidence - During the Title IX Grievance Hearing, both parties will be allowed to present relevant information and witnesses. Advisors will conduct cross-examination of the other party and witnesses. The Title IX Board may ask questions of the witnesses and/or the parties may submit questions to the Board to be asked of the parties and witnesses. The Chair has discretion to decide whether the Board will ask the questions submitted by the parties. Questions that are irrelevant, inappropriate, or are not in accordance with this policy will be excluded by the Chair.
4. Unavailability or Refusal to Testify or Submit to Cross-Examination - The Respondent and/or the Complainant may choose not to testify at the hearing; however, the exercise of that option will not preclude the hearing officer from making their responsibility determination and, as applicable, sanction recommendation regarding the Formal Complaint. Also, if a party or witness does not submit to cross-examination at the hearing, the hearing officer will not rely on any statement of that party or witness in reaching a determination regarding responsibility or, as applicable, recommendation regarding sanctions. The hearing officer will not draw an inference regarding responsibility or sanctions based solely on a party's or witness' absence from the hearing or refusal to testify or submit to cross-examination.
5. Determination of Responsibility - The Title IX Board shall apply a preponderance of evidence standard when arriving at a determination of whether a violation of the Policy occurred. The Board will meet privately following the conclusion of the hearing and will base its determination solely on information presented as part of the complaint resolution process (information from the Final Investigative Packet and that obtained during the hearing). All information, including inculpatory and exculpatory evidence, will be considered in making this determination. A majority vote of the Board must concur in the determination that a policy violation did occur or a finding of not responsible must be issued.
6. Recording - The University will record the hearing. This recording will be the only recording permitted of the proceedings and will be the property of WCU. The parties and the appeal officer may use the recording as part of the appeal process. Reasonable care will be taken to ensure a quality recording; however, technological problems that result in no recording or in an inaudible one will not affect the validity of the outcome of a hearing.
7. Record of Hearing - The Chair, or designee, shall prepare a written digest of the Title IX Grievance Hearing for the purpose of preserving a record of the Title IX Grievance Hearing proceedings in the event of an Appeal. The Chair shall include as an exhibit to the written digest any materials distributed to the Title IX Board

prior to a determination on sanctions. The Chair shall provide an opportunity for Complainant and Respondent to access the written digest and exhibits separately in a private setting at least two (2) calendar days prior to the deadline for filing an appeal. The parties may not make copies or take photographs of the written digest and exhibit.

8. Imposition of Sanctions

- a. General - If the Title IX Board determines a policy violation occurred, the Title IX Board may issue sanctions. In determining sanctions, the Title IX Board will (a) consider the totality of circumstances, including severity of the violation and ongoing community impact (i.e. impact on Complainant, Respondent, and the general campus), and (b) consider any relevant items, if any, from Respondent's files.. These items could include, but are not limited to: prior disciplinary records, criminal records, police reports, and/or interim measures imposed.

A majority vote of the Title IX Board must concur in the decision to impose any/all particular sanction(s) including the sanction effective date. This policy includes a list of possible sanctions (see subsection III.c,ii,7.c).

In the event that a Title IX Board determines the Respondent is not responsible for the violation alleged in the Formal Complaint, the University may continue to provide additional Supportive Measures for Complainant so long as those Supportive Measures do not unduly burden or prejudice Respondent.

- b. Notice of Action - Immediately following the Title IX Board's deliberation, the Complainant, Respondent and their respective advisors will return to the hearing. The Chair will verbally state the findings regarding responsibility and the sanctions (if any). The Title IX Grievance Hearing is then adjourned and a written Notice of Action (**Notice**) will be emailed to the parties within fourteen (14) calendar days after the date of the Title IX Grievance Hearing. This Notice will include the Board's decision of whether a policy violation occurred (including the specific prohibited acts and the Board's determination of responsibility for each prohibited act), the rationale for the decision, and the sanctions imposed, if any. The Notice will also provide information regarding each party's right of appeal. If the Title IX Board determines no policy violation occurred, then no sanction will be issued.
- c. Sanctions and Additional Remedies - If the Title IX Board issues a finding of responsibility, the Board may determine an appropriate sanction. Examples include:

- i. Residence Hall Suspension (student only sanction): Separation of the Respondent from the residence halls for a definite period of time after which the Respondent is eligible to return. Conditions for readmission may be specified.
- ii. Residence Hall Expulsion (student only sanction): Permanent separation of the Respondent from the residence halls.
- iii. Social Restrictions: Exclusion from participation in privileged or extra-curricular activities for a specified period of time, not to exceed two (2) academic semesters. Social probation may be extended to all activities, including campus social events, campus-sponsored functions, participation in University athletics (varsity, club, intramural), attendance at sporting events, or other activities deemed necessary by the Decision-Maker.
- iv. Restrictions: Denial of specified privileges for a designated period of time, not to exceed two (2) academic semesters including, but not limited to, attendance at events, access to facilities, participation in non-academic activities, and interpersonal contact restrictions.
- v. Suspension: Separation of the Respondent from the University for a definite period of time.
 - 1. Student - Conditions for readmission may be specified by the Decision-Maker. The sanction of University Suspension is recorded in the University of North Carolina Suspension and Expulsion database. Appeals related to suspension or expulsion must be addressed to the Vice Chancellor for Student Affairs. The Vice Chancellor for Student Affairs shall forward the appeal to the appropriate appellate body.
 - 2. Non-Student - Any suspension for a non-student shall comply with applicable university policies and procedures.
- vi. Expulsion (student only sanction): Permanent separation of the Respondent from the University and any University of North Carolina constituent institution. The sanction of University Expulsion is recorded in the University of North Carolina Suspension and Expulsion database. Appeals related to suspension or expulsion must be addressed to the Vice Chancellor for Student Affairs. The Vice Chancellor for Student Affairs shall forward the appeal to the appropriate appellate body.
- vii. Termination (employee only sanction): Permanent separation of the Respondent from University employment. The sanction of termination is recorded in the employee's personnel file.
- viii. Trespass: Removal for a specified period of time from any or all University property.
- ix. Warning: Notice, oral or in writing, that continuation or repetition of conduct in violation may be cause for more severe disciplinary sanctions.
- x. Probation: A written reprimand, which may include warning of more severe disciplinary sanction in the event of determination of a subsequent violation within a stated period of time.

- xi. Educational Outreach Assessment (student only sanction): A sanction that provides a tangible learning opportunity for Respondents. Through this sanction, the Respondent becomes an active contributor to the education of self and peers. An EOA may be financial, non- financial, or become financial if a Respondent does not complete a non-financial sanction.
- xii. Mandatory Educational Programming (student only sanction): This may include, but is not limited to, alcohol and/or drug abuse awareness/prevention programming, sexual harassment prevention training, educational awareness projects, reflection essays, and/or community restitution.

Failure to comply with sanctions imposed may result in additional sanctions, including separation from the University.

iii. Appeals

1. Grounds for Appeal - Either Complainant or Respondent may appeal a determination regarding responsibility and/or the University's dismissal of a Formal Complaint on the following grounds:
 - a. Procedural irregularity that materially affected the outcome of the case;
 - b. New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome; and/or
 - c. The Title IX Coordinator, Investigator, Decision-Maker, or member of the Title IX Board had a general or specific conflict of interest or bias against the complainant or respondent that materially affected the outcome.
2. Stay of Sanctions Pending Appeals - If the decision of the Title IX Board is appealed by either party, any sanction shall be stayed until the conclusion of any appeal timeline.
3. Filing an Appeal
 - a. Appeals must be filed in writing with the Dean of Students (for student Respondents) or the Associate Vice Chancellor, Human Resources & Payroll, or their respective designees, within seven (7) calendar days of receiving the written Notice.
 - b. Appeals must state in detail the procedural irregularity for the appeal. Appeals shall not exceed 5 pages, unless otherwise permitted by the Decision-Maker.
 - c. Upon receipt of a written appeal, the Dean of Students or Associate Vice Chancellor, Human Resources & Payroll, or their respective designees, will notify the opposing party of the appeal in writing and forward the appeal and the record on appeal to the appropriate Appeal Officer. The record on appeal comprises all materials reviewed by the Title IX Board, the written and/or audio digest of the hearing and exhibits (if any), and the Notice. The Dean of Students or the Associate Vice Chancellor, Human Resources & Payroll, or

their respective designees, shall provide an opportunity for Complainant and Respondent to access the appeal and the record on appeal separately in a private setting. The parties may not make copies or take photographs of the information.

- d. Appeals are heard by an Appeal Officer as specified by the Chancellor pursuant to this Procedure and Policy.

4. Appeal Procedures

- a. The Appeal Officer ordinarily will decide within seven (7) calendar days of receiving the record on appeal whether the appeal states sufficient grounds to be considered. If there is a finding of no sufficient grounds to appeal, the Appeal Officer shall dismiss the appeal. If the Appeal Officer dismisses the appeal, the Title IX Grievance Process will be deemed concluded and any sanction shall stand.
- b. If the Appeal Officer finds the appeal states sufficient grounds, the parties will be provided an opportunity to respond. When an appeal is requested by Respondent, the Appeal Officer will invite the Complainant to respond in writing. When an appeal is requested by Complainant, the Appeal Officer will invite the Respondent to respond in writing. Written responses shall not exceed five (5) pages and must be submitted no later than two (2) calendar days from the date of notification of the appeal.
- c. The Appeal Officer may, in the Appeal Officer's discretion, request additional documentation related to alleged procedural errors.
- d. The Appeal Officer considers the appeal solely on the information in the appeal, the record on appeal, the written responses, and additional documentation of procedural error, if any, and shall not consider any new evidence.

5. Actions Available on Appeal - The Appeal Officer may:

- a. uphold the decision of the Title IX Board;
- b. reverse or modify the decision of the Title IX Board based on the appeal criteria;
- c. When a policy violation determination is modified, the Appeal Officer may reduce or increase the sanction(s) to a sanction deemed appropriate by the Appeal Officer; and/or
- d. remand the matter to Title IX Board composed of trained individuals not previously involved in the matter. This action will only be taken in extraordinary cases, when the Appeal Officer determines the matter would be best addressed by a newly-constituted panel.

6. Counter Appeals - If both parties file appeals pursuant to this Policy and Procedure, the Appeal Officer shall follow the same procedures detailed above

and shall have the discretion to alter timelines. Appeals which state sufficient grounds to be considered will be reviewed concurrently and a final determination will be provided to both parties.

7. Notice of Outcome - The Appeal Officer will provide a written Notice of Outcome to both parties within ten (10) business days from the date of review for consideration, and this decision is final, marking the conclusion of the matter. The Notice of Outcome will state the Appeal Officer's decision, the rationale for the decision; and any addition, modification, or elimination of sanction(s). With the exception of suspensions and/or expulsion, newly imposed sanctions are not subject to further appeal.

IV. Scheduling

The Complainant and Respondent shall receive timely notice of any meeting or proceeding at which they may be present. The University will make reasonable efforts to schedule meetings and proceedings at times convenient to the parties. Meetings and proceedings will not be scheduled at a time when a party has an unavoidable conflict with a required academic obligation (e.g., classes, labs) or employment obligation (e.g., standing meeting with supervisor).

V. Deviation, Extensions, and Delays

Reasonable deviations from these procedures by the University will not invalidate a decision or proceeding unless significant prejudice to a student or employee is caused by such deviation. While the University will make every effort to complete actions within the stated timelines, the University may extend timelines for good cause and with written notice to Complainant and Respondent that explain the reason for the extension or delay.

VI. Timeframe

In typical cases, the timeframe for the Title IX Grievance Process (starting with the filing of a Formal Complaint and ending with a Determination of Responsibility, not including any appeals, will not exceed sixty (60) calendar days, not including the University holidays or days when the University is not in session. In some circumstances, including, but not limited to, cases involving a parallel criminal process; cases involving multiple alleged violations of this and other university policies, Complainants, and/or Respondents; and when the Title IX Grievance Process has to accommodate periods of time when the University is not in session—the timeframe for the complaint resolution process may exceed sixty (60) calendar days.

University Policy 129 Title IX Sexual Harassment Policy – Procedure 129.7 *Rights of Parents*

Initially approved August 14, 2020

Procedure Topic: Procedure governing rights of parents.

Authority: Title IX Coordinator

When a student Complainant or Respondent is a minor or has a guardian appointed and their parent or guardian has the legal right to act on the student’s behalf, then the parent or guardian may file a Formal Complaint on behalf of the student, although the student would be the “Complainant.” In such a situation, the parent or guardian may exercise the rights granted to the student under this Policy, including requesting Supportive Measures and participating in a grievance process. Similarly, the parent or guardian may accompany the student to meetings, interviews, and hearings during a grievance process to exercise rights on behalf of the student, while the student’s Advisor of choice may be a different person from the parent or guardian. Whether or not a parent or guardian has the legal right to act on behalf of an individual would be determined by state law, court orders, child custody arrangements, or other sources granting legal rights to parents or guardians.

Additionally, FERPA and its implementing regulations address the circumstances under which a parent or guardian is permitted to inspect and review a student’s education records. However, in circumstances in which FERPA would not grant a party the opportunity to inspect and review evidence in connection with a grievance process, pursuant to Title IX and its implementing regulations, the student has an opportunity to do so, and a parent or guardian who has a legal right to act on behalf of the student has the same opportunity.

University Policy 129 Title IX Sexual Harassment Policy – Procedure 129.8
Reserved

Initially approved:

Procedure Topic:

Authority:

University Policy 129 Title IX Sexual Harassment Policy – Procedure 129.9 *Conflict of Interest and Bias*

Initially approved August 14, 2020

Procedure Topic: Procedure mandating freedom from Conflict of Interest and Bias from named officials that are part of the Title IX Grievance Process.

Authority: Title IX Coordinator

- I. Any individual designated by the University as a Title IX Coordinator, Investigator, or any person designated to facilitate an informal or formal resolution process, must not have a conflict of interest or bias for, or against, complainants or respondents, generally, or against an individual Complainant or Respondent. Mere belief, without tangible evidence, that the Title IX Coordinator, Investigator, or person designated to facilitate an informal or formal resolution process is biased for or against a party is not enough to establish an allegation of bias for or against one of the named individuals.

- II. University Investigator(s), Title IX Board member(s), and any persons designated to facilitate an informal or formal resolution process who deem themselves disqualified for reasons of conflicts of interest or bias shall petition the Title IX Coordinator and request removal which will not be unreasonably withheld. Alternatively, the University Investigator(s), Title IX Board member(s), and/or any persons designated to facilitate an informal or formal resolution process may be removed by the Title IX Coordinator, or designee. Either party may petition the Title IX Coordinator for removal of the aforementioned individuals on the basis of a conflict of interest or bias.

University Policy 129 Title IX Sexual Harassment Policy – Procedure 129.10 *Retaliation*

Initially approved August 14, 2020

Procedure Topic: Procedure precluding retaliation.

Authority: Title IX Coordinator

No person shall be subject to restraints, interference, coercion, or reprisal for action taken in good faith to seek advice concerning an alleged violation of the Policy or any related Procedure; to file a Report or Formal Complaint; to initiate the Western Carolina University's Title IX Grievance Hearing Process; or to serve as a witness, Board member, or representative in an investigation and resolution of Report or Formal Complaint. Acts or threats of retaliation are a violation of this Policy or any related Procedure; University Policy; and the University of North Carolina Policy Manual and the Code; and will be investigated and adjudicated accordingly.

Complaints alleging retaliation for engaging in the Title IX Grievance Process may be filed using the Title IX grievance process