

The Catamount School Policy 1720 & 1725

Title IX Prohibited Conduct Policy and Procedures

Last Revised – August 2024

TITLE IX PROHIBITED CONDUCT POLICY & PROCEDURES

Policy Code: 1720 & 1725

I. TITLE IX NONDISCRIMINATION ON THE BASIS OF SEX

The Catamount School (School) and Western Carolina University (University) acknowledge the dignity and worth of all students and employees and strive to create a safe, orderly, caring, and inviting school environment to facilitate student learning and achievement. The purpose of this Policy is to support the School’s commitment to providing an institutional environment free from Title IX sex discrimination, sex-based harassment, and retaliation, as well as to provide an administrative framework and oversight for reporting, investigating, adjudicating, and resolving violations of this Policy.

The School and University do not discriminate on the basis of sex (including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity) in their education programs or activities, as required by Title IX of the Education Amendments Act of 1972 and federal regulations. Throughout this Policy, the term “education program” refers to all operations, services, and activities of the School, including admissions. The School/University will promptly and effectively address any such discrimination of which it has Knowledge/Notice using the resolution process established in this Policy. Allegations by employees of discrimination based on sex are addressed under [University Policy 129](#).

The Title IX Coordinator is responsible for overseeing the School’s/University’s compliance with Title IX, the Violence Against Women Reauthorization Act of 2013 (“VAWA”), and other federal and state laws and mandates. These responsibilities include investigating any complaints communicated to school officials alleging noncompliance with Title IX or alleging actions which would be prohibited by this law. Inquiries about the application of Title IX and its implementing regulations may be referred to the Title IX Coordinator and/or the Office for Civil Rights at the U.S. Department of Education. The Title IX Coordinator can be reached as follows:

Deidre Hopkins
Title IX Coordinator and Equity Officer
Western Carolina University
520 H.F. Robinson
dshopkins@wcu.edu
828-227-7116

II. SCOPE

This Policy provides a process for students, employees, and others to report sex discrimination prohibited by Title IX for response by school officials. All incidents of conduct that could

Adopted:

constitute Prohibited Conduct under this Policy are to be reported and treated in accordance with this Policy, even if the incidents may also constitute violations of other School or University policies or standards of conduct.

This Policy is only applicable to alleged incidents that occur on or after August 1, 2024. For alleged incidents of sex discrimination or sex-based harassment occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available from the Title IX Coordinator and are posted [here](#).

Conduct that involves discrimination on the basis of sex but that does not meet the definition of sex discrimination prohibited by this Policy may nevertheless violate other School or University policies or established standards of conduct and will be treated accordingly. See, for example, [Policy 1710](#), Discrimination and Harassment Prohibited by Federal Law, and [University Policy 53](#), Unlawful Discrimination. Nothing in this Policy is intended to limit discipline for violations of other School or University policies in such circumstances when appropriate and consistent with law. In addition, nothing in this Policy is intended to limit reports to law enforcement when warranted.

This Policy applies to all members of the School community, including students, employees, board members, volunteers, visitors, and others who participate in programs, activities, or conduct business on behalf of the School, and to incidents of Prohibited Conduct when at least one student is a Complainant or Respondent. “Visitors” include parents and other family members, individuals from the community, vendors, contractors, volunteers, and other persons doing business with or performing services on behalf of the School.

This Policy does not apply in instances when a student is **not** a Complainant or Respondent. For sex-based misconduct or retaliation for non-students, please refer to [University Policy 129](#), Prohibited Title IX Sex Discrimination, Sex-Based Harassment, and Retaliation Policy; and [University Policy 53](#), Unlawful Discrimination.

III. JURISDICTION

This Policy applies to the School’s education programs and activities (including locations, events, or circumstances in which the School exercises substantial control over both the Respondent and the context in which the conduct occurred, including but not limited to events occurring on school property, during any school-related or school-sponsored program or activity, and on school-sponsored transportation) and circumstances where the School has disciplinary authority. This Policy may also apply to the effects of out-of-school misconduct, including online conduct, that limit or deny a person’s access to the School’s education program or activities or affect a substantial School interest.

A substantial School interest includes:

- A. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.
- B. Any situation in which it is determined that the Respondent poses an imminent and serious threat to the health or safety of any student, employee, or other individual.

- C. Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
- D. Any situation that substantially interferes with the School's educational interests or mission.

For disciplinary action to be issued under this Policy, the Respondent must be a student or employee of the School at the time of the alleged incident. If the Respondent is unknown or is not a member of the School community, the Title IX Coordinator will offer to assist the Complainant in identifying appropriate school and local resources and support options and will implement appropriate supportive measures and/or remedial. The School can also assist in contacting law enforcement if the individual would like to file a police report about criminal conduct.

All vendors serving the School through third-party contracts must follow their employer's policies and procedures.

IV. PROHIBITED CONDUCT

The sections below describe the specific forms of legally prohibited sex discrimination, sex-based harassment, and retaliation that constitute Prohibited Conduct under this Policy. Speech or conduct protected by the First Amendment will not be considered Prohibited Conduct, though supportive measures will be offered to those impacted.

All offense definitions below encompass actual and/or attempted offenses.

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice versa. Patterns may exist based on similarity of focus or offense or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly.

A. Sex Discrimination

Sex discrimination occurs when, as a result of any act or failure to act, someone is treated differently and unfavorably on the basis of sex (including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, gender identity, or parental, family, or marital status) in the education program. Sex discrimination includes, but is not limited to, sex-based harassment.

Discrimination can take two primary forms:

1. Disparate Treatment Discrimination: Any intentional differential treatment of a person or persons that is based on a person's actual or perceived sex and that excludes a person from participation in, denies a person benefits of, or otherwise adversely affects a term or condition of a person's participation in a School program or activity.
2. Disparate Impact Discrimination: Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a

disproportionate impact on the basis of sex that excludes a person from participation in, denies a person benefits of, or otherwise adversely affects a term or condition of a person's participation in a School program or activity.

B. Sex-Based Harassment

Sex-based harassment, which is a type of sex discrimination, is defined as sexual harassment and other sex-based conduct that is one of the following, as described below: quid pro quo harassment, hostile environment harassment, sexual assault, dating violence, domestic violence, or stalking.

1. **Quid Pro Quo Sexual Harassment:** Quid pro quo harassment occurs when an employee, contractor, or other agent of the School explicitly or impliedly conditions the provision of an educational service or other aid or benefit of the school system on an individual's participation in unwelcome sexual conduct.
2. **Hostile Environment Harassment:** Hostile environment harassment is unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the School's education program. Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
 - i. the degree to which the conduct affected the Complainant's ability to access the education program;
 - ii. the type, frequency, and duration of the conduct;
 - iii. the parties' ages, roles within the education program, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
 - iv. the location of the conduct and the context in which the conduct occurred; and
 - v. other sex-based harassment in the education program.
3. **Sexual Assault**
 - i. Rape, defined as penetration by the Respondent, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of the Respondent, without the Consent of the Complainant.
 - ii. Fondling, defined as the touching of the private body parts of the Complainant (buttocks, groin, breasts) by the Respondent, for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of temporary or permanent mental or physical incapacity.
 - iii. Sodomy, defined as oral or anal penetration of the Complainant by the Respondent without the consent of the Complainant, including where the Complainant is incapable of giving consent because of their age or because of temporary or permanent mental or physical incapacity.
 - iv. Sexual Assault with an Object, defined as Respondent's use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of the

- Complainant, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
- v. Incest, defined as sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited by North Carolina law.
 - vi. Statutory rape, defined as sexual intercourse with a person who is under the statutory age of consent.
4. Dating Violence: Dating violence is intentionally or recklessly causing the Complainant physical, emotional, or psychological harm on the basis of sex, committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
- i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.
5. Domestic Violence: Domestic violence is intentionally or recklessly causing the Complainant physical, emotional, or psychological harm, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of North Carolina, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of North Carolina.
6. Stalking: Stalking is engaging in a course of conduct on the basis of sex, directed at the Complainant, which would cause a reasonable person to fear for the person's safety, or the safety of others, or to suffer substantial emotional distress.
- i. A 'course of conduct' requires that there be more than one incident and the conduct must be directed at a specific person. Stalking can occur in person or using technology, and the duration, frequency, and intensity of the conduct should be considered. Stalking tactics can include, but are not limited to, watching, following, using tracking devices, monitoring online activity, unwanted contact, property invasion or damage, hacking accounts, threats, violence, sabotage, and attacks.
 - ii. Merely annoying conduct, even if repeated, is a nuisance, but is not typically chargeable as stalking.
 - iii. A Complainant is not required to obtain medical or other professional treatment, and counseling is not required to show substantial emotional distress.

Examples of sex-based conduct that would be considered sex-based harassment if the conduct satisfies the criteria above include, but are not limited to: unwelcome sexual advances; requests for sexual favors; and other verbal or physical conduct of a sexual nature, such as deliberate, unwelcome touching that has sexual connotations or is of a sexual nature; suggestions or demands for sexual involvement accompanied by implied or overt promises of preferential treatment or threats; pressure for sexual activity; continued or repeated offensive sexual flirtations, advances, or propositions; continued or repeated verbal remarks about an individual's body; sexually degrading words used toward an individual or to describe an individual; the display of sexually suggestive drawings, objects, pictures, or written materials; posting sexually suggestive pictures of a person without the person's consent; and forwarding pornographic material depicting a classmate or other member of the school community. Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex characteristics, sex stereotypes, pregnancy or related conditions, gender identity, or sexual orientation but not involving conduct of a sexual nature may also constitute sex-based harassment. Sex-based harassment may be committed in person or through various mediums including via e-mail, text message, Internet message boards, interactions on social media, or other electronic media.

C. Retaliation

Retaliation, including peer retaliation, will be treated as a type of sex discrimination for purposes of this Policy. Retaliation means intimidation, threats, coercion, or discrimination against any person by the School, a student, or an employee or agent of the School for the purpose of interfering with any right or privilege secured by Title IX or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX, including in an informal resolution process, in the Resolution Process, and in any other actions taken in compliance with the school system's obligations under Title IX.

Students shall not engage in sexual or intimate conduct at school. In instances where students are both the Complainant(s) and Respondent(s), and it is identified that the Complainant(s) has provided consent and capable of providing consent, then the matter will be addressed pursuant to the School's [Code of Student Conduct and Behavior Policy](#).

V. DEFINITIONS

- A. Advisor - A person chosen by a Party, or appointed by the School, to accompany the Party to meetings related to the grievance process and advise and assist the Party throughout the process.
- B. Complainant - Any person who has alleged to be the victim of conduct that could constitute Title IX Prohibited Conduct, including a parent on behalf of their child.
- C. Complaint – A complaint is a written or oral request that objectively can be understood as a request for School officials to investigate and make a determination about alleged sex discrimination.
- D. Consent - For consent to be present, it must be knowing and voluntary, with clear permission, by word or action, to engage in sexual activity.
 - 1. It is the responsibility of each party to determine that the other has consented before engaging in the activity. For consent to be valid, there

must be a clear expression in words or actions that the other individual consented to that specific conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are commonly understood words or actions.

2. Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.
 3. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that activity must cease.
 4. Consent to some contact when permitted cannot be presumed to be consent for other activity.
 5. Proof of consent or non-consent is not a burden placed on either Party involved in an incident. Instead, the burden remains on the School to determine whether this Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances.
- E. Days – Days are business days unless specified otherwise.
- F. Decision-Maker - The Principal or designee will be the Decision-Maker for all formal grievances under this Policy, unless a conflict is determined, in which case the Title IX Coordinator will appoint a Decision-Maker.
- G. Investigator - An individual charged by the Title IX Coordinator with gathering testimonial and documentary evidence about an alleged violation of this Policy and compiling the information into an investigation report.
- H. Party or Parties - Complainant(s) and Respondent(s), either separately or collectively.
- I. Respondent - Any individual who has been reported to be the perpetrator of conduct that could constitute Title IX Prohibited Conduct.

VI. REPORTS/COMPLAINTS OF PROHIBITED CONDUCT

A. Reporting Suspected Prohibited Conduct

Any person who believes they have been discriminated against or harassed in violation of this Policy, or retaliated against for activities protected under this Policy, or who has information about conduct that reasonably may constitute Title IX Prohibited Conduct, should inform the Title IX Coordinator or any other school official designated to receive such complaints. Reports may also be made to a principal, teacher, counselor, assistant principal, teacher assistant, or any other school employee and may be made online through the [Title IX Reporting Form](#). Reports may be made anonymously, including through the anonymous tip line, but school officials may be limited in their ability to respond if the report does not identify the Complainant.

Reporting typically carries no requirement to begin an investigation, and in most situations, the School can respect a Complainant's request to not begin a resolution process. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, adult-on-student sexual behavior, an urgent threat to health and/or safety, or allegations against an employee where the School may need to begin a resolution process. If a Complainant does not wish to submit a Complaint, the School will maintain the privacy of information to the extent possible. The Complainant should

not fear a loss of confidentiality by giving Notice that allows the School to discuss and/or provide supportive measures, in most circumstances.

A Complaint, receipt of Notice, or Knowledge of suspected child abuse (including child sexual abuse) requires an immediate, mandated report to state officials, consistent with State law.

B. Mandatory Reporting

All School and University employees are considered “Mandatory Reporters.” Upon receiving any information about conduct that reasonably may constitute Title IX Prohibited Conduct, Mandatory Reporters may also be referred to as “Responsible Employees.”

Mandatory Reporters are required to report the information to the School Principal or Title IX Coordinator as soon as possible after disclosure or discovery of the facts giving rise to the report. Mandatory Reporters should provide as much detail about the alleged sex discrimination as is known. Any doubt about whether conduct may reasonably constitute sex discrimination must be resolved in favor of reporting the conduct. An employee who does not promptly report conduct as required by this subsection, or who knowingly provides false information about the incident, will be subject to disciplinary action, up to and including dismissal.

Employees who observe an incident of Prohibited Conduct are expected to intervene and stop the conduct in situations where they have supervisory control over the Respondent, and it is safe to do so.

C. Title IX Coordinator Response to Alleged Sex Discrimination

The Title IX Coordinator, whenever notified of conduct that he or she reasonably determines may constitute Prohibited Conduct, must promptly take the following actions:

1. treat the Complainant and Respondent equitably;
2. offer and coordinate supportive measures as described in VII of this Policy, as appropriate, for the Complainant;
3. notify the Complainant and, if the Complainant is a student, the Complainant’s parent, of the Resolution Process and, if appropriate, the informal resolution process as described in Section XI of this Policy;
4. if the Complainant is unknown, notify the individual who reported the conduct of the Resolution Process and, if appropriate, the informal resolution process;
5. take any other appropriate prompt and effective steps to end any Prohibited Conduct, prevent its recurrence, and remedy its effects.

VII. COMPLAINTS OF PROHIBITED CONDUCT

A. Submitting Complaints of Prohibited Conduct

A request for school officials to investigate an allegation of Prohibited Conduct may be made by submitting an oral or written complaint to the Title IX Coordinator.

Complaints may be submitted by the Complainant or the parent of a student Complainant. In addition, for complaints of Prohibited Conduct other than sex-based harassment, any student or employee or any other person who was participating or attempting to participate in the school system's education program at the time of the alleged Prohibited Conduct may submit the complaint.

B. Complaints Initiated by the Title IX Coordinator

If no complaint is submitted within five (5) days of the Title IX Coordinator receiving notice of conduct that the Title IX Coordinator reasonably determines may constitute Prohibited Conduct or if any or all of the allegations in a complaint are withdrawn, and an informal resolution process is not underway, the Title IX Coordinator must determine whether to initiate a complaint.

In making the determination, the Title IX Coordinator, in consultation with Legal Counsel if necessary, shall consider the following factors and any other relevant factors:

1. the Complainant's request not to proceed with initiating a complaint;
2. the Complainant's reasonable safety concerns regarding initiating a complaint;
3. the risk that additional Prohibited Conduct would occur if a complaint is not initiated;
4. the severity of the alleged Prohibited Conduct, including whether the Prohibited Conduct, if established, would require the removal of the Respondent from school or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
5. the age and relationship of the parties, including whether the Respondent is an employee;
6. the scope of the alleged Prohibited Conduct, including information suggesting a pattern, ongoing Prohibited Conduct, or Prohibited Conduct alleged to have impacted multiple individuals;
7. the availability of evidence to assist the Decision-maker in determining whether Prohibited Conduct occurred; and
8. whether school officials could end the alleged Prohibited Conduct and prevent its recurrence without initiating the resolution procedures.

A decision by the Title IX Coordinator to initiate a complaint is not to be construed as (1) supportive of the Complainant or in opposition to the Respondent; (2) an indication of whether the allegations are credible or have merit; or (3) an indication of whether there is evidence sufficient to determine responsibility. Initiating a complaint does not make the Title IX Coordinator a Complainant or party to the complaint nor relieve the Title IX Coordinator from any responsibilities under this Policy.

The Title IX Coordinator shall document the decision of whether to initiate a complaint and the reasons for that decision.

C. Initial Evaluation

The Title IX Coordinator shall conduct an initial evaluation within five (5) days of receiving

Notice/Complaint/Knowledge of alleged Prohibited Conduct. The initial evaluation typically includes:

1. Assessing whether the reported conduct may reasonably constitute a violation of the Policy.
2. Determining whether the School has jurisdiction over the reported conduct, as defined in the Policy.
3. Offering and coordinating supportive measures for the Complainant.
4. Offering and coordinating supportive measures for the Respondent, as applicable.
5. Notifying the Complainant, or the person who reported the allegation(s), of the available resolution options, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below.
6. Determining whether the Complainant wishes to initiate a Complaint.
7. Notifying the Respondent of the available resolution options, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below, if a Complaint is made.

D. Consolidation of Complaints

Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, may be consolidated and investigated as one complaint when the allegations of Prohibited Conduct arise out of the same facts or circumstances, unless consolidation would violate the Family Educational Rights and Privacy Act (FERPA). When more than one Complainant or more than one Respondent is involved, references in this Policy include the plural, as applicable.

E. Counter Complaints

The School is obligated to ensure that the Resolution Process is not used for retaliatory purposes. Although the School permits counter-complaints, the Title IX Coordinator will use an initial evaluation, described above, to assess whether the allegations in the counter-complaint are made in good faith. When counter-complaints are not legitimate, they will not be permitted. They will be considered potentially retaliatory and may constitute a Policy violation.

Counter-complaints determined to have been reported in good faith will be processed under this Policy. At the Title IX Coordinator's discretion, investigation of such claims may take place concurrently or after resolution of the initial Complaint.

F. Dismissal of a Complaint

Within five (5) days of a complaint being submitted, the Title IX Coordinator shall review the allegations and make a determination whether to dismiss the complaint without further investigation.

A decision not to dismiss the complaint at this stage does not prevent the Title IX Coordinator or Investigator from dismissing the complaint at any point in the Resolution Process if it is determined that a permissible reason exists.

1. Permissible Reasons for Dismissal

- i. A complaint may be dismissed if:
 - a. the School is unable to identify the Respondent after taking reasonable steps to do so;
 - b. the Respondent is not participating in the education program and is not employed by the School;
 - c. the Complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the Title IX Coordinator determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute a Policy violation even if proven; or
 - d. the Title IX Coordinator determines the conduct alleged in the complaint, even if proven, would not constitute Prohibited Conduct. Before dismissing the complaint on this basis, the Title IX Coordinator shall make reasonable efforts to clarify the allegations with the Complainant.

2. Notifications Upon Dismissal

Upon dismissal of a complaint, the Title IX Coordinator shall promptly notify the Complainant and, if the Complainant is a student, the Complainant's parent of the dismissal, the basis for the dismissal, and that the dismissal may be appealed. If the dismissal occurs after the Respondent has been notified of the allegations, the Title IX Coordinator shall provide the same notification to the Respondent and, if the Respondent is a student, the Respondent's parent promptly after notification to the Complainant, or simultaneously if notification is in writing.

3. Bases for Appealing a Dismissal

Dismissals may be appealed on the following bases:

- i. procedural irregularity that would change the outcome;
- ii. new evidence that would change the outcome and that was not reasonably available when the dismissal was made; or
- iii. the Title IX Coordinator or Investigator had a conflict of interest or bias for or against the Complainant or Respondent generally or individually that would change the outcome.

4. Appeal Process for Dismissals

- i. Appeal to the Dean: The Complainant or the parent of a student Complainant may appeal the dismissal of the complaint in writing to the Title IX Coordinator within three days of receiving notice of the dismissal.
- ii. The grounds for dismissal appeals are limited to:
 - a. Procedural irregularity that would change the outcome.
 - b. New evidence that would change the outcome and that was not reasonably available when the dismissal was decided.

- c. The Title IX Coordinator, Investigator, or Decision-maker 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.
- iii. The appeal request should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from one or more Parties, the Title IX Coordinator will share the request with all other Parties and provide three (3) business days for other Parties and the Title IX Coordinator to respond to the request. At the conclusion of the response period, the Title IX Coordinator will forward the appeal, as well as any response provided by the other Parties and/or the Title IX Coordinator to the Appeal Decision-maker for consideration.
- iv. The Appeal Decision-maker is typically the Dean of the College of Education and Allied Professions (Dean), unless the Dean was the Respondent or took part in the investigation of the allegations or dismissal of the complaint, in which case the WCU Provost or designee shall serve as the Appeal Decision-maker.
- v. Within ten (10) days of receiving the appeal, the Appeal Decision-maker may either:
 - a. Deny the request if the information provided does not meet any of the appeal grounds; or
 - b. Affirm the request and reinstate the Complaint for resolution under the Policy.
- vi. The Appeal Decision-maker shall implement appeal procedures equally for the parties. Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so. The Appeal Decision-maker's decision shall be in writing and shall include the rationale for the decision.

5. Steps Taken After a Dismissal

When a complaint is dismissed, the Title IX Coordinator shall, at a minimum:

- i. offer supportive measures to the Complainant, as appropriate;
- ii. if the Respondent has been notified of the allegations, offer supportive measures to the Respondent, as appropriate; and
- iii. take other prompt and effective steps, as necessary, to prevent future Prohibited Conduct within the education program.

VIII. SUPPORTIVE MEASURES

Supportive measures are individualized measures offered as appropriate, as reasonably available, and at no cost to the parties, to: (1) restore or preserve that party's access to the education program, including measures that are designed to protect the safety of the parties or the educational environment; or (2) provide support during the Resolution Process or during the informal resolution process. Supportive measures must not unreasonably burden a party to

the complaint and may not be imposed for punitive or disciplinary reasons.

Supportive measures may vary depending on what is reasonably available. Examples of supportive measures may include: counseling; extensions of deadlines or other course-related adjustments; modifications of work, class, or extracurricular schedules or activities, regardless of whether a comparable alternative exists; school escort services; restrictions on contact applied to one or more Parties; leaves of absence; increased security and monitoring of certain areas of the School; and other similar measures. Supportive measures may include referrals to both confidential and private resources.

The School will maintain as confidential any supportive measures provided to the Complainant or Respondent to the extent that maintaining such confidentiality would not impair the ability of the School to provide supportive measures. School/WCU employees shall not disclose information about supportive measures to persons other than the person to whom they apply unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or when advised by Legal Counsel or the Dean that an exception is permitted by law.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Supportive measures may, as appropriate, be modified or terminated by the Title IX Coordinator at the conclusion of the Resolution Process or informal resolution process or may continue beyond that point. The Parties are provided with a timely opportunity to seek modification or reversal of the School's decision to provide, deny, modify, or terminate supportive measures applicable to them, and a request to do so should be made in writing to the Title IX Coordinator within five (5) days of the decision. The Appeal Decision-maker may modify or reverse the decision upon determining that the action was inconsistent with the definition of supportive measures as described above. In addition, a party may petition the Title IX Coordinator for modification or termination of a supportive measure applicable to them if circumstances change materially and may appeal the decision to the Appeal Decision-maker within five (5) days by submitting a written request to the Title IX Coordinator.

Supportive measures will be offered to individuals involved in reports of Prohibited Conduct whether or not they file a Complaint.

IX. EMERGENCY REMOVAL

Any student Respondent is subject to removal from the education program, or any part of the program, on an emergency basis if a school-based threat assessment team conducts an individualized safety and risk analysis and determines that removal is justified because the person poses an imminent and serious health or safety threat to any person arising from the allegations of Prohibited Conduct.

A schedule change and/or removing a student from an extracurricular activity may also be considered a removal under this subsection where such action would not otherwise constitute a supportive measure (i.e., where the action "unreasonably burdens" either or both Parties).

Any such removal must be consistent with federal and state law, including any applicable law protecting the rights of individuals with disabilities. The Respondent shall receive notice of the removal and an opportunity to challenge the decision in an informal hearing

immediately following the removal. Appeals for emergency removal should be submitted to the Title IX Coordinator within two (2) days of the notification. The Title IX Coordinator will assign an administrator to review the appeal who was not involved in the initial assessment of emergency removal (generally, the Dean). Upon receipt of the challenge, the administrator will meet with the student (and their Advisor, if desired) as soon as reasonably possible thereafter to allow them to explain why the removal/action should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine only whether the emergency removal is appropriate, should be modified, or lifted.

When this meeting is not requested within two (2) business days, objections to the emergency removal will be deemed waived. A student can later request a meeting to show why they are no longer an imminent and serious threat because conditions related to imminence or seriousness have changed. A Complainant (and their Advisor) may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable for them to do so.

The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the Title IX Coordinator for review.

An emergency removal may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Title IX Coordinator will communicate the final decision in writing, typically within three (3) business days of the review meeting. All decisions made after the appeal of the emergency removal are final.

An employee Respondent may be placed on administrative leave during the pendency of the Resolution Process if consistent with applicable state and federal laws.

X. RESOLUTION PROCESS FOR COMPLAINTS OF SEX DISCRIMINATION, SEX-BASED HARASSMENT, AND RETALIATION

A. General Principles

1. **Equitable Treatment:** During the pendency of the Resolution Process, the School will treat Complainants and Respondents equitably. No person with a conflict of interest or bias for or against the Complainant or Respondent individually or generally may act as the Title IX Coordinator, Investigator, or Decision-maker.
2. **Presumption of Non-Responsibility/Innocence:** The Respondent will be presumed not responsible for the alleged Prohibited Conduct until a determination is made at the conclusion of the Resolution Process. No disciplinary consequence or other action that is not a supportive measure may be imposed for a violation of this Policy unless the Respondent agrees to a specific disciplinary consequence or action in an informal resolution or has been determined to be responsible for the Prohibited Conduct at the conclusion of the Resolution Process. Notwithstanding the limitation just described, Respondents are subject to temporary removal as described above in Section IX.

3. Privacy: School officials involved in the Resolution Process shall take reasonable steps to protect the privacy of the parties and witnesses throughout the Resolution Process, including requiring the parties and witnesses to maintain the confidentiality of information and evidence obtained solely through the grievance proceedings. However, no steps will be imposed that restrict the ability of the parties to (1) obtain and present evidence, including by speaking to witnesses; (2) consult with their family members, confidential resources, or advisors; or (3) otherwise prepare for or participate in the Resolution Process.
4. Timeliness: The School will make a good faith effort to complete the Resolution Process within sixty (60) days, including any appeals, which the Title IX Coordinator can extend as necessary for appropriate cause. The Parties will receive regular updates on the progress of the Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.
 - i. If a party or witness chooses not to participate in the Resolution Process or becomes unresponsive, the School reserves the right to continue it without their participation to ensure a prompt resolution. Non-participatory or unresponsive Parties retain the rights outlined in this Policy and the opportunity to participate in the Resolution Process.
 - ii. Reasonable extensions of any timeframes established under this Policy may be made on a case-by-case basis for good cause. If an extension is necessary, the parties will receive written notice of the extension and the reason for the extension prior to the end of the original timeframe. School officials shall make reasonable efforts to keep the parties apprised of progress being made during any extension period. Delays that interfere with the exercise of the party's legal rights are not permitted.
 - iii. Failure by a party to appeal a decision within the specified time limit will be considered acceptance of the decision at the current step, unless the party has notified the appropriate School official of a delay and the reason for the delay and the official has consented to the delay in writing.

B. Advisors

The Parties may have up to two (2) Advisors of their choice who may, but are not required to, be an attorney, and as long as the Advisor is not an employee involved in the intake or an individual who is a part of the adjudication process. The School may appoint an Advisor, without fee or charge, to any party if the party chooses. If a Party chooses to obtain an advisor apart from one appointed by the School, the Party will be responsible for all potential costs associated with obtaining that advisor.

An Advisor may be present during interviews; however, they are not permitted to speak or ask questions during interviews. Parties are required to respond for themselves.

The Complainant retains all rights and status as a Complainant irrespective of their level of

participation.

An Advisor will be required to complete specific paperwork regarding these procedures and the parameters of student or employee confidentiality before serving as an Advisor. If an Advisor interferes with the procedures, the Title IX Coordinator may remove them from the role.

C. Notice of Allegations

If the Title IX Coordinator decides not to dismiss the complaint or if the Complainant successfully appeals a dismissal, the Title IX Coordinator shall promptly provide known parties and, if they are students, their parents with a notice of allegations that includes the following:

1. the Resolution Process and the Informal Resolution process, as described in this Policy;
2. sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s);
3. a statement that retaliation is prohibited; and
4. a statement that (1) the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence and (2) if provided a description of the evidence, the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

If, during an investigation, the Investigator decides to investigate additional allegations of Prohibited Conduct by the Respondent toward the Complainant that are not included in the initial notice or that are included in a complaint that is consolidated, the Investigator shall promptly notify the parties of the additional allegations.

D. Investigation

1. Initiating an Investigation

After providing the notification of allegations, the Title IX Coordinator shall offer and coordinate supportive measures as described in Section VII of this Policy, as appropriate, for the parties. The Title IX Coordinator shall also assign the complaint to the University Investigator or other appropriate Investigator, who will conduct an investigation. If the Notice of Investigation was not sent with the Notice of Allegations, the Investigator will send to the Parties prior to initiating the investigation.

2. Conducting an Investigation

The investigation must be adequate, prompt, reliable, and impartial. The burden is on the Investigator, not on the parties, to conduct an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred.

The Investigator shall question all relevant parties and witnesses and adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of Prohibited Conduct. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

The Investigator shall review all evidence gathered through the investigation, including both evidence that tends to support the allegations (inculpatory evidence) and evidence that tends to refute the allegations (exculpatory evidence) and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

3. Witness Role and Participation in the Investigation

Employees (not including Complainant and Respondent) are required to cooperate with and participate in the School's investigation and Resolution Process. Student witnesses and witnesses from outside the School community cannot be required to participate but are encouraged to cooperate with investigations and to share what they know about a Complaint. Student witnesses may be accompanied by a parent/guardian for any interviews or meetings.

Interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, Webex), or, in limited circumstances, by telephone. The School will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

4. Interview Recording

It is standard practice for Investigators to create a record of all interviews pertaining to the Resolution Process, by recording, transcript, or written summary. The Parties may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

All interviews are recorded, and all involved persons should be made aware of the audio and/or video recording. The recording and/or transcript of those meetings will be provided to the Parties for their review, after which the Parties may pose additional questions to each other. Those subsequent meetings or interviews are also recorded and/or transcribed and shared with the Parties.

5. Impermissible Evidence

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used) at any stage of the Resolution Process, including appeals, regardless of whether the evidence is relevant:

- i. evidence provided to a confidential employee or evidence that is otherwise protected under a privilege recognized by federal or State law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- ii. a party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the School obtains that party's or witness's voluntary, written consent for use in the Resolution Process; and
- iii. evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to alleged sex-based harassment or preclude determination that sex-based harassment occurred.
- iv. Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

6. Equal Opportunities

The Investigator shall provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and permissible.

The Investigator shall provide each party with an equal opportunity to access either the relevant, permissible evidence or an accurate description of this evidence. If the Investigator provides a description of the relevant, permissible evidence, the Investigator shall provide the parties with an equal opportunity to access such evidence upon the request of any party. The Investigator shall provide a reasonable opportunity to respond to the evidence or accurate description of the evidence and shall take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the Resolution Process. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint are authorized.

E. Hand-Off to Decision-Maker

Upon completion of the investigation, the Investigator shall prepare the Final Investigation Report and provide the report and evidence file to the Title IX Coordinator.

The Title IX Coordinator will provide the Decision-maker, the Parties, and their Advisors with the Final Investigation Report and the evidence file. The Decision-maker will review Final Investigation Report, all appendices, and the evidence file. If the record is incomplete, the Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informal meetings with the Parties or any witnesses, if needed.

Upon reviewing the relevant evidence, the Decision-maker may also choose to pose additional questions, in writing or via interview (e.g., in person or via video technology). To the extent credibility is in dispute and relevant to one or more of the allegations, the Decision-maker may meet individually with the Parties and witnesses to question them in order to assess their credibility. At their discretion, the Decision-maker may also meet with any party or witness to ask additional relevant questions that will aid the Decision-maker in making their findings.

The Decision-maker will then apply the preponderance of the evidence standard to make a determination on each of the allegations and, if applicable, any associated sanctions. Prior to a determination, the Title IX Coordinator will also provide the Parties with an opportunity to submit a written impact and/or mitigation statement. The Title IX Coordinator will review these statements upon receipt to determine whether there are any immediate needs, issues, or concerns, but will otherwise hold them until after the Decision-maker has made determinations on the allegations. If there are any findings of a Policy violation, the Decision-maker will request the Impact Statements from the Title IX Coordinator and review them prior to determining sanctions. They will also be exchanged between the Parties at that time.

F. Determination of Sanctions and Responsive Actions

Sanctions will be implemented as soon as it is feasible once a determination is final, either upon the outcome of any appeal or the expiration of the window to appeal, without an appeal being requested. The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

1. Factors the Decision-maker may consider when determining sanctions and responsive actions include, but are not limited to:
 - i. The nature, severity of, and circumstances surrounding the violation(s)
 - ii. The Respondent's disciplinary history
 - iii. The need for sanctions/responsive actions to bring an end to the Prohibited Conduct
 - iv. The need for sanctions/responsive actions to prevent the future recurrence of the Prohibited Conduct
 - v. The need to remedy the effects of the Prohibited Conduct on the Complainant and the community
 - vi. The impact on the Parties
 - vii. The Respondent's acceptance of responsibility
 - viii. Any other information deemed relevant by the Decision-maker(s)
2. Student Sanctions
 - i. The disciplinary consequences for student violations of this Policy will be imposed by the Principal, Dean, or other

designated school official in accordance with the [Code of Student Conduct and Behavior Policy](#). Based on the nature and severity of the offense and the circumstances surrounding the incident, the student will be subject to appropriate consequences and remedial actions ranging from positive behavioral interventions to expulsion.

- ii. A student recommended for a long-term suspension or expulsion will have all applicable rights accorded by School policy and state law.
 - iii. This Policy will not be construed to allow school officials to punish student expression or speech based on undifferentiated fear or apprehension of a disturbance or out of a desire to avoid the discomfort and unpleasantness that may accompany an unpopular viewpoint.
 - iv. The following are the common sanctions that may be imposed upon students singly or in combination:
 - a. Reprimand: A formal statement that the conduct was unacceptable and a warning that further violation of any School policy, procedure, or directive will result in more severe sanctions/responsive actions.
 - b. Required Counseling: A mandate to meet with and engage in either School-sponsored or external counseling to better comprehend the misconduct and its effects.
 - c. Restrictions: A student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, or holding leadership roles in student organizations.
 - d. Alternative Placement: The student is placed in an alternative learning environment.
 - e. Suspension: In-school, out-of-school, etc. for a specific duration, and/or until specified conditions are met.
 - f. Expulsion: Permanent separation from the School. The student may be banned from School/University property, and the student's presence at any school-sponsored activity or event may be prohibited. This action may be enforced with a trespass action, as necessary.
 - g. Other Actions: In addition to, or in place of, the above sanctions, the School may assign any other sanctions as deemed appropriate.
3. Employee Sanctions: A Decision-maker's determination of responsibility against an employee Respondent shall result in a referral, which may recommend proposed discipline, to designated institutional authorities for consideration pursuant to The UNC Policy Manual Section [1300.11\[R\]](#).

G. Disciplinary Consequences for Other Infractions

1. False Statements: False or malicious complaints of Prohibited Conduct and false statements made in bad faith in the course of any grievance

procedure conducted pursuant to this Policy are subject to disciplinary action, up to and including dismissal for an employee and long-term suspension for a student. However, no discipline will be imposed for making a false statement solely on a determination of whether Prohibited Conduct occurred.

2. Other Conduct: Nothing in this Policy will preclude the School from taking disciplinary action against a student or employee when the evidence does not establish Prohibited Conduct as defined in this Policy, but the conduct violates other School policy, University policy and/or the Code of Student Conduct or expected standards of employee behavior. However, no discipline will be imposed for engaging in consensual sexual conduct based solely on a determination of whether Prohibited Conduct occurred.

H. Consequences for Other Respondents

1. Volunteers and visitors who engage in Prohibited Conduct will be directed to leave school property and/or be reported to law enforcement, as appropriate. A third party under the supervision and control of the School will be subject to termination of contracts/agreements, restricted from access to school property, and/or subject to other consequences, as appropriate.

I. Remedies

Remedial measures may be provided, as appropriate, to Complainants or other persons who had their equal access to or participation in the education program limited or denied by Prohibited Conduct in violation of this Policy. Such measures may include counseling, mental health services referral, extensions of deadlines or other course-related adjustments, other academic resources or support, modifications of work or class schedules, escort services, change in student parking location, mutual or one-way restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring, and other measures determined by school officials to be necessary to restore or preserve the person's equal access to the education program.

J. Other Steps

The Title IX Coordinator may take other measures to end or prevent instances of Prohibited Conduct regardless of whether any individual has been found responsible for the Prohibited Conduct. The Title IX Coordinator may implement or coordinate the implementation of classroom-wide or school-wide responses such as additional staff training, discrimination prevention programs, and other measures reasonably calculated to end prohibited behavior, eliminate a hostile environment and its effects if one has been created, and prevent recurrence of the behavior.

The Title IX Coordinator shall encourage Complainants to report any subsequent problems and may conduct follow-up inquiries as warranted to determine if there have been any new incidents of Prohibited Conduct or any instances of retaliation.

K. Failure to Comply

All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-maker(s), including the Appeal Decision-maker or the Informal Resolution agreement.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or for any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the School.

Supervisors are expected to enforce the completion of sanctions/responsive actions for their employees.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Title IX Coordinator's satisfaction.

L. Notice of Outcome

Within ten (10) days of the conclusion of the Administrative Resolution Process, the Title IX Coordinator provides the Parties with a written outcome notification. The outcome notification will specify the finding for each alleged Policy violation, all applicable sanctions that the School is permitted to share pursuant to federal or state law, and a detailed rationale, written by the Decision-maker, supporting the findings to the extent the School is permitted to share under federal or state law.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals.

The Title IX Coordinator will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official School records, or emailed to the Parties' School-issued or designated email account. Once mailed, emailed, and/or received in person, the outcome notification is presumptively delivered.

M. Appeals

If either party is dissatisfied with the Decision Maker's determination of whether Prohibited Conduct occurred, the party or, if the party is a student, the party's parent may submit an appeal in writing to the Title IX Coordinator within ten days of receiving the Notice of Outcome. The Title IX Coordinator will assign an Appeal Decision-maker to hear the appeal, who must not have been previously involved in the Resolution Process for the Complaint, and who is typically the Dean.

Appeals are limited to the following grounds:

1. A procedural irregularity that would change the outcome.
2. New evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility was made.
3. The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a

- conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that would change the outcome.
4. The Final Determination is contrary to the weight of the evidence in the record (applicable to sanctions of suspension or expulsion only).
 5. The sanctions fall outside the range of sanctions designated for this offense, considering the cumulative conduct/disciplinary record of the Respondent (applicable to sanctions of suspension or expulsion only).

The Request for Appeal will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This is not a review of the merits of the appeal, but rather a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed. If the Request for Appeal does not provide information that meets the grounds in this Policy, the request will be denied by the Appeal Decision-maker, and the Parties and their Advisors will be simultaneously notified in writing of the denial and the rationale.

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. Appeal decisions are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions apply the preponderance of the evidence standard of proof. The Appeal Decision-maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation. The Dean may also conduct any further investigation necessary or take any other steps to respond.

An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the Title IX Coordinator (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new determination and assign new Investigator and Decision-maker roles.

A Notice of Appeal Outcome letter (“Appeal Outcome”) will be sent to all Parties simultaneously, or without significant time delay between notifications, usually within ten days of the Request for Appeal. Written notification may be delivered by one or more of the following methods: in person, mailed to the Parties’ local or permanent address as indicated in official institutional records, or emailed to the Parties’ School-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, the Appeal Outcome will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

If a remand results in a new determination that is different from the appealed determination,

that new determination can be appealed, once, on any of the available appeal grounds.

Any sanctions imposed as a result of the determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the emergency removal procedures (detailed above) for a “show cause” meeting on the justification for doing so must be permitted within two (2) days of implementation.

N. Accommodations and Support During the Resolution Process

1. Disability Accommodations

The School is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the Resolution Process.

Anyone needing such accommodations or support should contact the Title IX Coordinator who will work with School personnel as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

2. Other Support

The School will also address reasonable requests for support for the Parties and witnesses, including:

- i. Language services/Interpreters
- ii. Access and training regarding use of technology throughout the Resolution Process
- iii. Other support as deemed reasonable and necessary to facilitate participation in the Resolution Process.

XI. INFORMAL RESOLUTION

At any time prior to determining whether Prohibited Conduct occurred, the Title IX Coordinator may facilitate an informal resolution between the Parties. An informal resolution process will not be offered if: (1) there are allegations that an employee engaged in sex-based harassment of a student; (2) the alleged conduct would present a future risk of harm to others; or (3) the Title IX Coordinator determines that other circumstances make informal resolution inappropriate. If an informal resolution process is used, the Title IX Coordinator shall, to the extent necessary, take other appropriate prompt and effective steps to ensure that Prohibited Conduct does not continue or recur within the education program.

An informal resolution process will not be used unless both the Complainant and the Respondent have voluntarily consented to its use. No School or WCU employee shall require or pressure a Complainant or Respondent to participate in an informal resolution process. No individual will be required to waive the right to an investigation and determination of a complaint as a condition of participation in the education program or the exercise of any other

right.

The Title IX Coordinator, in consultation with the Dean and Principal, shall assign a School employee to facilitate the informal resolution process. The Title IX Coordinator may also serve as the Facilitator, but the Facilitator will not be the same person as the Investigator in the Resolution Process. The Facilitator must have received appropriate training and must not have a conflict of interest or bias for or against the Complainant or Respondent generally or individually.

Before the initiation of an informal resolution process, the Parties must receive notice that explains: (1) the allegations; (2) the requirements of the informal resolution process; (3) that, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the Resolution Process; (4) that agreement to a resolution at the conclusion of the informal resolution process precludes the parties from initiating or resuming the Resolution Process arising from the same allegations; (5) the potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and (6) what information the School will retain and whether and how the School could disclose such information for use in the Resolution Process if the Resolution Process is initiated or resumed.

The School offers four approaches to Informal Resolution:

- A. Supportive Resolution. When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation.
 1. The Facilitator will meet with the Complainant to determine reasonable supportive measures that are designed to restore or preserve the Complainant's access to the education program and activity. Such measures can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the Facilitator may also provide reasonable supportive measures for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options, and the Title IX Coordinator does not initiate a Complaint.
- B. Educational Conversation. When the Title IX Coordinator or designee can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations or can accompany the Complainant in their desire to confront the conduct.
 1. The Complainant(s) may request that the Facilitator address their allegations by meeting (with or without the Complainant) with the Respondent(s) to discuss concerning behavior and school policies and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they required to provide any information if they attend. The conversation will be documented as the Informal Resolution for the matter, if it takes place. In light of this conversation, or the Respondent's decision not to attend, the Facilitator or Title IX Coordinator may also implement remedial actions to ensure that policies and expectations are clear and to minimize the risk of the recurrence of any behaviors that may not align

with Policy.

- C. Accepted Responsibility. When the Respondent is willing to accept responsibility for violating Policy and is willing to agree to actions that will be enforced similarly to sanctions, and the Complainant(s) and School are agreeable to the resolution terms.
1. The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator will determine whether Informal Resolution is an option.
 2. If Informal Resolution is available, the Facilitator will determine whether all Parties and the School are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of this Policy, implements agreed-upon restrictions and remedies, and determines the appropriate responses in coordination with other appropriate administrator(s), as necessary.
 3. This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Resolution Process will either continue or resume.
 4. When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the discrimination or harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.
- D. Alternative Resolution. When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.
1. The School offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent(s); indirect action by the Title IX Coordinator, Facilitator, or other appropriate School officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.
 2. The Title IX Coordinator has the authority to determine whether alternative resolution is available or successful, to assign a Facilitator to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.
 3. The Title IX Coordinator maintains records of any resolution that is reached and will provide notification to the Parties of what information

is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). The results of Complaints resolved by alternative resolution are not appealable.

Any Party participating in an informal resolution can stop the process at any time and begin or resume the formal grievance process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Administrative Resolution, should Informal Resolution not be successful, unless agreed to by all Parties.

If an investigation is already underway, the Title IX Coordinator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

XII. PROHIBITED DISCLOSURES OF PERSONALLY IDENTIFIABLE INFORMATION

School/WCU employees shall not disclose personally identifiable information obtained in the course of complying with this Policy, except in the following circumstances: (1) when prior written consent has been obtained from a person with the legal right to consent to the disclosure; (2) when the information is disclosed to a parent with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue; (3) to carry out the purposes of this Policy, including action taken to address conduct that reasonably may constitute Prohibited Conduct prohibited by this Policy; (4) as required by federal law or regulation or the terms and conditions of a federal award, including a grant award or other funding agreement; or (5) to the extent such disclosures are not otherwise in conflict with Title IX, when required by State law or when permitted under the Family Educational Rights and Privacy Act.

Legal References: Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, h, 34 C.F.R. pt. 99; Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.*; Rehabilitation Act of 1973, 29 U.S.C. 705(20), 794, 34 C.F.R. pt. 104; Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, 34 C.F.R. pt. 100; Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 *et seq.*, 34 C.F.R. pt. 106; *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998); *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999); G.S. 115C-335.5

Cross References: Discrimination and Harassment Prohibited by Federal Law (Policy 1710)

Adopted: August 1, 2024