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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

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 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 or the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in or performance of 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. 1092A(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 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 factfinders who, during the course of the investigation, typically conduct interviews with the Complainant, the Respondent, and other witnesses; take custody of any physical or electronic records or documents to be included

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

Initially approved August 14, 2020

Procedure Topic: Reporting incident of Title IX Sexual Harassment

<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) 4536020

Email: [OCR.DC@ed.gov](mailto: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 129.5 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 cross-examination at a live hearing as outlined in Procedure 129.6 Advisors

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

- 1.! A formal complaint was filed;
- 2.! The process for resolution (formal and informal);

- 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.b.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 or 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. Title IX Grievance Process is paused, the Complainant will be notified of the change.

- 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) Director of Employee Relations, Talent Acquisition & Development or designee (for employees) to finalize the terms of the resolution and facilitate agreed upon sanction(s).

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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 ~~de~~ns 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), Associate Vice Chancellor, Human Resources & Payroll 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

2. Prehearing meeting Both parties may schedule a prehearing 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 ask 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

prior to a determination on sanctions. The Chair shall provide an opportunity for Complainant and Respondent to access the written digest and exhibit 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.

## 8.1 Imposition of Sanctions

- a.1 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, 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

- 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 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 future.

- xi.! Educational Outreach Assessment (student only sanction) 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 financial sanction.
- xii.! Mandatory Educational Programming (student only sanction) 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, DecisionMaker, 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 DecisionMaker.
  - c.! Upon receipt of a written appeal, the Dean of Students/Associate Vice Chancellor, Human Resources & Payroll, or their respective designees, 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



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.

7.1 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 its 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 expulsion, newly imposed sanctions are not subject to further appeal.

#### IV.1 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 obligations (standing meeting with supervisor).

#### V.1 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.1 Timeframes

# 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

University Policy 129 Title IX Sexual Harassment Policy Procedure 129.8  
Reserved

Initially approved  
Procedure Topic:  
Authority:

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University Policy 129 Title IX Sexual Harassment Policy Procedure 129.9

## 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 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