

<b>Policy Number/Title:</b>	1.1.4 Title IX Sexual Harassment
<b>Effective Since:</b>	07/11/2023
<b>Last Revision Approved:</b>	07/06/2023
<b>Responsible Office:</b>	Title IX Coordinator; Office of Title IX

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## **1. Scope:**

This policy applies to all members of the Winthrop University Community, including current and prospective students (meaning those who are registered, or enrolled, for credit, or non-credit-bearing, coursework at the time of the alleged policy violation), faculty, staff, applicants for employment or admission; volunteers, members of governing boards, employees of affiliated entities, employees of embedded associated organizations, and all others who demonstrate that they were attempting to participate in the University's education program or activity at the time of the alleged policy violation. The prohibition of Title IX sexual harassment/sex-based discrimination shall also apply to contractors, vendors, visitors, guests or other third parties. This policy pertains to prohibited conduct committed by or against students, employees, and third parties when the University has actual knowledge of Title IX sexual harassment/sex-based discrimination that occurred in an education program or activity of Winthrop University, and against a person in the United States.

## **2. Definitions:**

“Education program or activity”: Includes locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the sexual harassment/sex-based discrimination occurs. Education program or activity includes any building owned or controlled by a student organization that is officially recognized by the University as well as University owned or controlled property.

Complainant(s): is the person, or persons, that is the alleged impacted party of sexual harassment or sex-based discrimination under this policy.

Respondent(s): is the person, or persons, alleged to have perpetrated an act or acts of sexual harassment or sex-based discrimination raised in a Title IX complaint.

Exculpatory: refers to evidence/information that would support a respondent not being found in-violation of this policy.

Inculpatory: refers to evidence/information that would support a respondent being found in-violation of this policy.



**Decision maker:** a trained University staff or faculty member, or third party, appointed by the Title IX Coordinator to evaluate evidence, determine relevancy during cross-examination, and make and write decision regarding the finding (in-violation or not in-violation) of a complaint . This role was also known as the hearing officer in the Prior Title IX guidance.

**Appellate Decision Maker:**a trained University staff or faculty member, or third party, appointed by the Title IX Coordinator to evaluate any appeal of a Title IX determination and make and write decision regarding the appeal within the timeframe mandated in the policy.

**Advisor (Title IX):** a person who may assist a party to a Title IX complaint by accompanying them to any meeting and during a hearing, asking relevant questions of witnesses during cross-examination on behalf of the represented party.

**Investigator:** a person or persons assigned by the Title IX Coordinator to investigate a formal complaint. Investigators are trained neutral fact-finders and may rotate on a case-by-case basis.

**Appeal:** refers to a written request to review a decision or outcome for the purpose of reversing or changing it.

**Informal complaint/Report:** a written report submitted to receive supportive measures, such as referrals to on (Counseling Services, SATS, Office of Accessibility, etc.) or off-campus (Piedmont Medical Center, Safe Passage, law enforcement, etc.) resources.

**Formal complaint:** a written complaint submitted with the intention of moving forward with an investigation or other resolution process.

**Grievance Process:** refers to the process used to resolve a Title IX Complaint.

**Title IX Coordinator:** A University employee trained to coordinate campus-wide compliance with Title IX, intake and analyze reports and complaints, initiate formal complaints, and coordinate/implement supportive measures.

**Quid pro Quo (Title IX):** An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

**Hostile Environment (Title IX):**Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.



**Sexual Assault (Title IX):** Any sexual act directed against another person without consent of that individual, including instances where the individual is incapable of giving consent. These acts include: rape, sodomy, sexual assault with an object, fondling, statutory rape, or incest.

**Rape (Title IX):** The carnal knowledge (sexual intercourse) of a person, without the consent of the individual, including instances where the individual is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. There is carnal knowledge if there is the slightest penetration of the vagina by the penis.

**Sodomy (Title IX):** Oral or anal sexual intercourse with another person, without the consent of the individual, including instances where the individual is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

**Sexual Assault with an Object (Title IX):** Use of an object or instrument to penetrate, however slight, the genital or anal opening of the body of another person, without the consent of the individual, including instances where the individual is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. Object or instrument shall mean anything used by the offender other than the offender's genitalia.

**Fondling (Title IX):** The touching of the private, intimate body parts of another person for the purpose of sexual gratification, without the consent of the impacted person, including instances where the impacted person is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

**Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent in South Carolina (Individuals age 15 or younger).

**Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law in South Carolina.

**Dating Violence (Title IX):** Violence committed by a person: who is or has been in a social relationship of a romantic or intimate nature with the impacted party; and where the existence of such a relationship shall be determined based on a consideration of the following factors: (length of the relationship, type of the relationship, and frequency of interaction between the persons involved in the relationship).

**Domestic Violence (Title IX):** Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the impacted party, by a person with whom the impacted party shares a child in common, by a person who is cohabitating with or has



cohabitated with the impacted party as a spouse or intimate partner, by a person similarly situated to a spouse of the impacted party under the domestic or family violence laws of South Carolina, or by any other person against an adult or youth impacted party who is protected from that person's acts under the domestic or family violence laws of South Carolina.

Stalking (Title IX): Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

Supportive Measures (Title IX): Non-disciplinary, non-punitive individualized services, 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. Supportive measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, and/or deter sexual misconduct/harassment.

Preponderance of evidence standard: Concluding that evidence/information obtained regarding a claim is more likely than not to be true, the burden of proof is met. Where the evidence/information in a case is equal, i.e., 50-50 between the parties, then the standard has not been satisfied.

### **3. Policy:**

#### 1.0 Definitions

See above.

#### 2.0 Application of Policy

Where a formal complaint includes allegations of Title IX sexual harassment/sex-based discrimination and other alleged violations of Winthrop policy, this grievance procedure may be used to resolve all alleged policy violations.

Alleged sexual misconduct that does not meet the Title IX sexual harassment/sex-based discrimination standard shall be processed in accordance with the Student Sexual Misconduct Policy or the Sexual Harassment and Discrimination Policy, as applicable.

The formal and informal grievance procedures do not apply to incidents involving respondents who are third parties. Reported third party misconduct will be handled expediently on a case-by-case basis and may include immediate removal of the third party from the campus or program or activity of the University.

### 3.0 Sexual Harassment Prohibited

Title IX sexual harassment/sex-based discrimination is conduct based on sex/gender that satisfies one or more of the following:

3.1 Quid Pro Quo: An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct; or

3.2 Hostile Environment: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or

3.3 Any sexual act directed against another person without consent of that individual, including instances where the individual is incapable of giving consent. These acts include: rape, sodomy, sexual assault with an object, fondling, statutory rape, or incest:

3.3.1 Rape: The carnal knowledge (sexual intercourse) of a person, without the consent of the individual, including instances where the individual is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. There is carnal knowledge if there is the slightest penetration of the vagina by the penis.

3.3.2 Sodomy: Oral or anal sexual intercourse with another person, without the consent of the individual, including instances where the individual is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

3.3.3 Sexual Assault with an Object: Use of an object or instrument to penetrate, however slight, the genital or anal opening of the body of another person, without the consent of the individual, including instances where the individual is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. Object or instrument shall mean anything used by the offender other than the offender's genitalia.

3.3.4 Fondling: The touching of the private, intimate body parts of another person for the purpose of sexual gratification, without the consent of the impacted person, including instances where the impacted person is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.



3.3.5 Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent in South Carolina (Individuals age 15 or younger).

3.3.6 Incest: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law in South Carolina.

3.4 Dating Violence: Violence committed by a person:

3.4.1 Who is or has been in a social relationship of a romantic or intimate nature with the impacted party; and

3.4.2 Where the existence of such a relationship shall be determined based on a consideration of the following factors (length of the relationship, type of the relationship, and frequency of interaction between the persons involved in the relationship).

3.5 Domestic Violence: Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the impacted party, by a person with whom the impacted party shares a child in common, by a person who is cohabitating with or has cohabitated with the impacted party as a spouse or intimate partner, by a person similarly situated to a spouse of the impacted party under the domestic or family violence laws of South Carolina, or by any other person against an adult or youth impacted party who is protected from that person's acts under the domestic or family violence laws of South Carolina.

3.6 Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

#### 4.0 RETALIATION

Neither the University or other persons may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. The exercise of rights protected under the First Amendment does not constitute prohibited retaliation. Complaints alleging retaliation will be addressed consistent with the University's policy on Non-Discrimination and Anti-Harassment Policy, and/or Student Code of Conduct, as applicable.

#### 5.0 PRIVACY AND CONFIDENTIALITY

5.1 The University does not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. However, where a party's



conduct toward a witness might constitute “tampering” (i.e., attempting to alter or prevent a witness’s testimony), such conduct is prohibited. Information contained within the evidence review provisions afforded to the parties must not be inappropriately disclosed or disseminated by the parties.

5.2 The University will keep information private, to the extent reasonably possible and permitted under applicable law, including the identity of any person who has reported Title IX sexual misconduct/harassment, or who has been reported to be a perpetrator of Title IX sexual misconduct/harassment. However, information may be disclosed, and includes, but is not limited to, the following instances: as permitted under the Family Educational Rights Privacy Act (FERPA), if disclosure is required by other law or lawful processes (e.g., subpoena or search warrant), or if disclosure is necessary to carry out the purposes of Title IX and its regulations, including to conduct a grievance process

## 6.0 ADVISOR OF CHOICE

6.1 Parties may be accompanied to any meetings, and during the hearing, by an advisor of their choice, who may be, but is not required to be, an attorney.

6.2 An advisor may not participate in the investigative interview(s) as a representative of that party (that is, answer questions for, or ask questions on behalf of, their advisee or make statements for the advisee).

6.3 Advisors may be asked to leave the investigative interview(s) if disruptive or causing an unreasonable delay in the conduct of the interview(s).

6.4 During a hearing, advisors are permitted to ask relevant questions of parties and witnesses, during cross-examination, but are not permitted to offer opening statements, closing statements, or answer questions on behalf of a party.

## 7.0 REPORTING

7.1 Maintaining a discrimination-free environment is the responsibility of every member of the Winthrop community. Timely reports of alleged violations enable the University to stop or prevent prohibited conduct from occurring or escalating. As the University can only take corrective action when it becomes aware of problems, the University reasonably expects prompt reporting of discrimination, harassment, sexual misconduct and retaliation under this Policy. All employees, except those who are confidential resources, as identified in this Policy, who receive reports or are made aware of conduct that could violate this Policy, are required to report it in a timely manner. Employees with the authority to institute corrective measures on behalf of the University include: President; Members of the President’s Executive leadership team; General Counsel, Chief of Police, Title IX Coordinator and



Deputy Title IX Coordinators; Vice Presidents; and Deans. Employees with this authority must also report alleged violations to the Title IX Coordinator.

7.2 The University has designated Title IX staff to carry out its Title IX obligations, which include investigating complaints alleging sex discrimination, including Title IX sexual misconduct/harassment under this Policy. Therefore, all instances of sex-based discrimination, harassment and sexual misconduct must be reported to the Title IX Coordinator.

7.3 Reports of Title IX sexual misconduct/harassment may be submitted by any person to the Title IX Coordinator, or designee. Reports may be submitted electronically (Report an Incident), via email, mail, phone or in person. The Office of Title IX and ADA Compliance is housed within the Division of the Office of the President. The Title IX Coordinator or any Deputy Title IX Coordinators can be contacted via the list provided below:

**Title IX Coordinator**

Kevin R. Sheppard, Sr.  
105 Tillman Hall Office:  
(803) 323-3928  
[titleix@winthrop.edu](mailto:titleix@winthrop.edu)

**Deputy Title IX Coordinator (for reports or Formal Complaints involving Students)**

Amber Slack  
Associate Vice President for Student Affairs & Dean of Students  
246 DiGiorgio Campus Center  
Office: (803) 323-4503  
[slacka@winthrop.edu](mailto:slacka@winthrop.edu)

**Deputy Title IX Coordinator (for reports or Formal Complaints involving Student-Athletes)**

Chuck Rey Athletics Director  
Winthrop Coliseum  
Office: (803) 323-2129  
[reyc@winthrop.edu](mailto:reyc@winthrop.edu)

**Deputy Title IX Coordinator (for reports or Formal Complaints involving Employees)**

Lisa Cowart  
Vice President for Human Resources, Employee Diversity and Wellness  
303 Tillman Hall  
Office: (803) 323-2273  
[cowartl@winthrop.edu](mailto:cowartl@winthrop.edu)



7.4 In addition to, or in lieu of filing a formal complaint under this Policy, students and employees may file an external complaint(s) with the Office for Civil Rights in the United States Department of Education at:

**U.S. Department of Education**

Office for Civil Rights  
Lyndon Baines Johnson Department of Education Bldg.  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Phone Number: (800) 421-3481  
Fax Number: (202) 453-6021  
Email Address: OCR@ed.gov

7.5 Criminal Reports: For alleged criminal conduct occurring on campus, reports also should be made to the Winthrop University Police Department at 803-323-3333, or if the incident occurred off campus, reports should be made by calling 911. Sexual assault, domestic violence, stalking, and other forms of sexual violence are criminal acts. The University strongly encourages impacted parties of criminal acts to promptly inform law enforcement to receive proper medical care, preserve evidence and to commence a timely criminal investigation. Regardless of whether the individual decides to pursue criminal remedies, the University offers advocate resources and initial counseling services.

**8.0 SUPPORTIVE MEASURES**

8.1 The University offers non-disciplinary, non-punitive individualized services, as appropriate, as reasonably available, and without fee or charge to the complainant and the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

8.2 Supportive measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties and the University's educational environment, and to deter sexual harassment.

8.3 Upon receipt of a report of prohibited conduct under this Policy, the Title IX Coordinator, or designee thereof, will contact the person who may have experienced misconduct and discuss the availability of supportive measures along with their preferences about supportive measures, the availability of support measures with or without filing a formal complaint, and the process for filing a formal complaint.

8.4 Supportive measures can include, but are not limited to:  
Mutual no-contact directives between the parties;



Academic or work adjustments;  
Campus housing adjustments;  
Campus Police - campus escorts; Increased security and monitoring of areas on campus;  
Referral to resources on and off-campus; and  
Any other measure the Title IX Coordinator deems appropriate given the circumstances.

## 9.0 CONFIDENTIAL RESOURCES

The University provides confidential resources for those individuals who wish to discuss a situation in strict confidence without providing notice to the University such that action under this Policy may be pursued.

Confidential resources include:

**Health and Counseling Services** – 803-323-2206 (confidential counseling for students)  
**EAP Services** – 800-633-3353 or 704-5229-1428 (confidential counseling for employees)

Additional Resources:

### **On-Campus Resources Available to Students Include:**

- Winthrop University Police Department (803) 323-3333
- Office of Title IX and ADA Compliance (803) 323-3928
- Student Advocacy and Trauma Support Office (803) 323-2206
- Dean of Students Office (803) 323-4503
- Residence Life (803) 323-2223
- On-Campus Resources Available to Employees Include:
  - Winthrop University Police Department (803) 323-3333
  - Office of Title IX and ADA Compliance (803) 323-3928
  - Office of Human Resources/Employee Relations (803) 323-2273 • Ombudsperson

## 10.0 FORMAL GRIEVANCE PROCESS

**10.1 Equitable Treatment:** The parties will receive equitable treatment under this grievance process. Complainant(s) and Respondent(s) will be offered supportive measures, and remedies will be provided to the Complainant should a determination of responsibility for Title IX sexual misconduct/harassment is made against the Respondent.

**10.2 Objective Evaluation of Relevant Evidence:** Both during the investigation and hearing, relevant evidence will be evaluated objectively, including both inculpatory and exculpatory evidence.

**10.3 No Conflicts of Interest or Bias:** Individuals serving as Title IX Coordinators, investigators, decision-maker(s), or any person facilitating an informal resolution are trained in conducting fair, thorough, and impartial proceedings and do not have a conflict



of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

## 11.0 COMPLAINTS

11.1 Formal Complaint: At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an education program or activity of the University. Complaints must be in writing and signed by the complainant (verified electronic signatures are acceptable). The respondent must be a member of the campus community (e.g., employee or student).

11.2 Formal Complaint Signed by the Title IX Coordinator, or designee:

11.2.1 The Title IX Coordinator, or designee may submit a complaint alleging misconduct prohibited by this policy.

11.2.2 In such instances, the Title IX Coordinator, or designee, does not become the complainant or a party to the complaint. When a Title IX Coordinator, or designee, signs a formal complaint, that action does not place the Title IX Coordinator or designee in a position adverse to the respondent.

11.2.3 The Title IX Coordinator or designee is initiating an investigation based on allegations of which the Title IX Coordinator has been made aware and does not prevent the Title IX Coordinator from being free from bias or conflict of interest with respect to any party.

11.2.4 Where an individual reporting an alleged violation requests that the University not take any action, the University may still have an obligation to respond and will consider factors to determine what action may be necessary, including, but not limited to: The seriousness of the alleged conduct, Whether violence was threatened and/or weapons were used, Whether there have been other reports about the same individual, The age of the victim, The credibility of the information received, and When the University has an outweighing interest, including protecting the rights and safety of others.

11.3 Submission of Formal Complaint: Complainants may submit the complaint by email, online through the Winthrop System for reporting, mail, or in-person, to the Office of Title IX and ADA Compliance.

11.4 Notice of Formal Complaint:

11.4.1 After receipt of a formal complaint alleging Title IX sexual misconduct/harassment under this policy, the Title IX Coordinator, or designee, shall send written notice of the formal complaint to the parties. The notice will provide: Information about the allegations, including sufficient detail, known at the time; A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process; A statement that the parties may have an advisor of their choice who may, but does not have to be an attorney; Parties may inspect and review evidence, as applicable; and Notice that knowingly submitting false information



during the grievance process is prohibited and subject to disciplinary action, and There will be reasonable time to prepare a response before any initial interview.

11.4.2 Prior to an initial investigative interview, the parties can attend a meeting to discuss the grievance process and the need for supportive measures.

11.4.3 If additional allegation(s) are raised during the investigation, that warrant investigation under this grievance process, the notice to the parties will be supplemented with the applicable updated information.

11.5 Consolidation of Formal Complaints:

11.5.1 The Title IX Coordinator, or designee, may consolidate formal complaints against one or more respondents filed by one or more complainants that arise out of the same facts or circumstances.

11.5.2 In essence, the allegations are so intertwined that the allegations directly relate to all the parties.

11.5.3 This also may include counter-complaints by one party against the other.

11.5.4 A single investigative report will be issued where complaints are consolidated.

11.6 Mandatory Dismissal of a Formal Complaint: If the conduct alleged in the formal complaint: Would not constitute Title IX sexual misconduct/harassment as defined above, Did not occur in the University's education program or activity, or Did not occur against a person in the United States, then the University must dismiss the formal complaint with regard to that conduct for purposes of sexual misconduct/harassment under Title IX. This does not preclude the alleged misconduct from being addressed under another University policy.

11.7 Discretionary Dismissal of Formal Complaint: The University may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: A complainant notifies the Title IX Coordinator, in writing, that the complainant would like to withdraw the formal complaint or any allegations therein; The respondent is no longer enrolled or employed by the University; or other specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations contained in the complaint (i.e., where a complainant refuses to participate in the process, where the respondent is not under the authority of the University because the respondent is a non-student, non-employee, or other individual not affiliated with the University).

11.8 Notice of Dismissal of Formal Complaint: Upon either a discretionary or mandatory dismissal of a formal complaint, the University will send written notice of the dismissal along with the reason(s) for the dismissal simultaneously to the parties.

## 12.0 INTERIM ACTION



12.1 Emergency Removal of Students: The University may remove a respondent from the University's education program or activity on an emergency basis. Prior to an emergency removal, the University will undertake an individualized safety and risk analysis to determine whether there is an immediate threat to the physical health or safety of any student or other individual based on the allegations of Title IX sexual misconduct/harassment which justifies emergency removal of the respondent. A respondent will receive notice of the emergency removal and the opportunity to challenge the decision immediately following the removal. A respondent whose primary role with the University is a student may challenge the emergency removal by submitting an appeal of this decision, setting forth the reasons why the circumstances do not support emergency removal to the Title IX Coordinator within five university business days of notification of removal.

12.2 Emergency Removal Inappropriate, Generally: Emergency removal is not appropriate in every situation where Title IX sexual misconduct/harassment has been alleged, but only in situations where an individualized safety and risk analysis supports removal.

12.2.1 Examples: Emergency removal may be appropriate where a respondent threatens violence against the complainant in response to the complainant's allegations; the allegations themselves raise an immediate threat to health or safety of any person; the respondent reacts to being accused of Title IX sexual harassment by threatening self-harm, etc.

12.3 Emergency Removal of Employees:

12.3.1 The University may place a non-student employee respondent on leave during the pendency of this grievance process.

12.3.2 Student employees may also be placed on leave where the student-employee's access to educational benefits and opportunities are not jeopardized.

12.4 Other Interim Action: The Title IX Coordinator, or designee, may implement other interim action as may be appropriate under the circumstances.

## 13.0 INVESTIGATION OF FORMAL COMPLAINT

13.1 Timeframe for Investigation:

13.1.1 The University makes all reasonable efforts to complete the investigation of formal complaints, exclusive of any appeals, evidence review and comment periods, within 90 business days.

13.1.2 This timeframe maybe extended for good cause. Good cause may include things such as the absence of a party, a party's advisor or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; etc.

13.1.2 Should the timeframe be extended, the parties will be notified, in writing, about the extension and the reason for that extension.



13.2 Burden of Proof: The burden of proof shall be on the University to make all reasonable efforts to gather relevant evidence that is directly related to the formal complaint and to decide about whether this policy has been violated.

13.3 Presumption of Innocence: The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

13.4 Privileged Information:

13.4.1 The grievance process, including hearings, will not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of information protected under a legally recognized privileged, unless the person holding the privilege has waived it.

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

13.5 Evidence:

13.5.1 Both parties will have the opportunity to present inculpatory and exculpatory evidence and name witnesses, including fact and expert witnesses.

13.5.2 Where evidence is duplicative of other evidence, the investigator may deem the evidence not relevant.

13.5.3 Parties to the grievance process under this policy do not have the right to depose parties or witnesses, nor to invoke a court system's subpoena powers to compel parties or witnesses to appear at hearings, or otherwise.

13.5.4 Likewise, the University does not compel participation or have subpoena power under this grievance process.

13.5.5 The University expects all parties and witnesses to be truthful in information that they provide to the University, and the failure to be truthful in this process may constitute a separate violation of University policy or the Student Code of Conduct.

13.6 Review of Evidence:

13.6.1 Both parties have the opportunity, upon request, to review evidence that is directly related to the allegations raised in the formal complaint that has been received by the investigator and that is not protected by legal privilege that has not been waived.

13.6.2 The investigator may redact information that is not directly related to the allegations or as may be required under applicable law.

13.6.3 Requests to review evidence under this provision must be made, in writing, to the investigator at least 10 university business days prior to review. Information contained within this evidence review must not be inappropriately disclosed or disseminated by the parties.



13.6.4 This section shall not be construed to restrict the ability of either party to discuss generally the allegations or to gather and present relevant evidence.

#### 13.7 Review of Relevant Evidence and Written Response:

13.7.1 Prior to completion of the investigative report, the parties and their advisors, if any, will receive the relevant evidence directly related to the allegations raised in the formal complaint in an electronic format or a hard copy.

13.7.2 The investigator may redact information that is not relevant or as may be required under applicable law. The parties will have 10 university business days to review this evidence and to submit a written response, which the investigator will consider prior to completion of the investigation/investigative report. Information contained within this review must not be inappropriately disclosed or disseminated by the parties.

13.7.3 This section shall not be construed to restrict the ability of either party to discuss generally the allegations or to gather and present relevant evidence.

#### 13.8 Investigative Report:

13.8.1 Upon conclusion of the investigation of the formal complaint, the investigator will prepare a written report that fairly and accurately summarizes the investigation and includes any inculpatory and exculpatory evidence.

#### 13.8.2 Review of Investigative Report and Written Response:

13.8.2.1 At least 10 university business days prior to the hearing, each party and their advisor, if any, will receive the final investigative report in an electronic format or a hard copy, for their review and written response.

13.8.2.2 The investigator may redact information that is not relevant or as may be required under applicable law.

13.8.2.3 A party may submit a written response to the investigative report within 10 university business days of receipt thereof. Any written response provided by the party under this provision will be included and provided to the decision-maker(s) for consideration.

13.8.2.4 If no response is received within 10 university business days from the provision of the final investigative report to the party, the University will proceed with the grievance process without the response. Information contained within this review must not be inappropriately disclosed or disseminated by the parties.

13.8.2.5 This section shall not be construed to restrict the ability of either party to discuss generally the allegations or to gather and present relevant evidence.

#### 14.0 INFORMAL RESOLUTION PROCESS

14.1 After receipt of a formal complaint, the University may offer an informal resolution to the parties, depending on whether the University determines that informal resolution may be appropriate, and the parties agree.



14.2 The parties must voluntarily agree, in writing, to the informal resolution process to resolve a complaint informally. Either party may withdraw from the informal resolution process prior to agreeing to a resolution and resume the formal grievance process.

14.3 To proceed with an informal resolution, the University will provide written notice to the parties about the following information: The allegations; The requirements of the informal resolution process; and Any consequences that may result from participating in the informal resolution process such as records that will be maintained, or shared.

14.4 Informal resolution does not involve full investigation or adjudication as set forth in the formal grievance process. The University makes all reasonable efforts to complete the informal resolution process within 45 university business days. This timeframe may be extended for good cause. Should the timeframe be extended, the parties will be notified, in writing, about the extension and the reason for the extension. Resolutions reached in the informal resolution process will be binding on the parties.

14.5 Informal resolution will not be used to resolve allegations involving a student where an employee is the respondent.

## 15.0 HEARINGS

15.1 A hearing shall be conducted live either in-person or using electronic mediums.

15.1.1 Either party may participate remotely, at their election.

15.1.2 The hearing shall be recorded, by audio or audiovisual recording, or by transcript.

15.1.3 The recording will be available for the parties to inspect and review. Written requests to review the recording shall be made to the Title IX Coordinator.

15.1.4 For each case, the decision-maker(s), cannot be the same person as the Title IX Coordinator, Deputy Title IX Coordinators, or investigators.

15.1.5 The decision-maker(s), will objectively evaluate all relevant evidence, both inculpatory and exculpatory, and reach a determination regarding responsibility as alleged in the formal complaint.

15.2 Questioning of Parties and Witnesses by Advisor:

15.2.1 At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

15.2.2 This questioning is limited to cross-examination and does not include direct examination.

15.2.3 Cross-examination must be conducted directly, orally, and in real time by the party's advisor and never by a party personally.

15.2.4 Only relevant cross-examination may be asked of a party or witness.

15.2.5 Before a complainant, respondent, or witness answers questions posed during cross-examination, they must await determination by the decision-maker(s) about whether the question is relevant.

15.2.6 Appointing Advisors: If a party does not have an advisor who is available to be present at the live hearing, the University will provide the party an Advisor from the advisor pool, agreed to by the party, without fee or charge to that party, for the limited purpose of conducting cross-examination on behalf of that party.

15.2.7 Parties must notify the University at least three university business days prior to the hearing of whether the party has an advisor to be present at the hearing.

### 15.3 Relevancy Determinations:

15.3.1 Determinations about the relevancy of evidence at the hearing shall be made by the decision-maker(s).

15.3.2 The decision-maker(s) will provide a brief explanation for decisions about excluding evidence or questions based on relevancy. For instance, a decision-maker(s) may explain briefly that a question is irrelevant because the question calls for prior sexual behavior information without meeting an exception thereto, or because the question asks about a detail that is not probative of any material fact concerning the allegations.

### 15.3.3 Evidence that is Not Relevant and Must be Excluded:

15.3.3.1 Information that is protected by a legally recognized privilege that has not been waived;

15.3.3.2 Evidence about a complainant's prior sexual behavior or predisposition are not relevant unless offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with the respondent and are offered to prove consent;

15.3.3.3 Any party's medical, psychological, and similar records unless the party has given voluntary, written consent; and

15.3.3.4 The decision-maker(s) shall make an admissibility determination related to party or witness statements that have not been subjected to cross-examination at a live hearing.

### 15.4 Refusal to Submit to Cross-Examination During Hearing:

15.4.1 If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) will make a determination as to the admissibility of any statement of that party or witness in reaching a determination regarding responsibility. This determination may be made with any relevant evidence which includes statements from a party not available for cross-examination, such as, but not limited to: Reports (Police, Sexual Assault Nurse Examiner (SANE), and other), Written Statements, Text Messages, Emails, and Video Evidence. To the extent that such evidence which does not contain statements from a party not available for cross-examination, it is admissible in hearing.

15.4.2 The decision-maker(s) cannot draw an inference about the determination regarding



responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

15.5 Video Evidence: Where a party refuses to answer cross-examination questions but video evidence exists showing the underlying incident, the decision-maker(s) may still consider the evidence in making a determination.

15.6 Written Determination by Decision-Maker(s): The decision-maker(s) will determine responsibility via written determination.

15.7 Contents of Written Determination: Identification of the allegations that would, if true, constitute Title IX sexual misconduct/harassment; General description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence and information about any hearings; Findings of fact supporting the determination of responsibility; Conclusions regarding the application of the Title IX Sexual Harassment Policy to the facts; A statement of and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanction(s) or recommendation(s), and any remedies for the complainant; and The process and basis for the complainant and respondent to appeal the written determination of responsibility.

15.8 Timing of Written Determination:

15.8.1 The parties will be provided simultaneous notification of the written determination of responsibility. Reasonable efforts will be made to deliver the outcome to the parties contemporaneously.

15.8.2 The University makes all reasonable efforts to issue its written determination within 30 university business days from the conclusion of the hearing. This timeframe maybe extended for good cause. Should the timeframe be extended, the parties will be notified, in writing, about the extension and the reason for the extension.

15.9 Finality of Written Determination:

15.9.1 The written determination of responsibility becomes final only after the time period to file an appeal has expired, or if a party does file an appeal, after the appeal decision has been sent to the parties.

15.9.2 Upon finality of the written determination, the Title IX Coordinator will provide notice to the appropriate divisional vice presidents as to the determination and along with any sanctions, remedies, or recommendations regarding the parties.

## 16.0 STANDARD OF EVIDENCE



The standard of evidence used to determine violations of this policy is preponderance of evidence. The preponderance of evidence standard is understood as: Concluding that evidence/information obtained regarding a claim is more likely than not to be true, the burden of proof is met. Where the evidence/information in a case is equal, i.e., 50-50 between the parties, then the standard has not been satisfied.

## 17.0 SANCTIONS

17.1 Where the decision-maker(s) finds that a respondent has violated this policy, a sanction proportionate to the severity of the violation will be issued. Sanctions range from a no-contact order to separation from the University.

17.2 Student sanctions may include, but are not limited to, things such as: no contact orders, restrictions on access to campus facilities, mandated assessments and referrals to a licensed practitioner, mandatory participation in educational courses, conduct probation, removal from housing, suspension, and expulsion. Employee sanctions may include, but are not limited to: written reprimand, suspension, and termination, among others.

17.3 The decision-maker may confer with the appropriate Student Affairs official (such as the Dean of Students, Director of Student Conduct, etc.) on possible student remedies and the appropriate Human Resources official (such as the VP of Human Resources, Employee Relations Manager, etc.) for possible employee remedies.

17.4 Appropriate corrective action will be taken to address, end, and prevent recurrence of Title IX sexual misconduct/harassment.

## 18.0 REMEDIES

18.1 Remedies are designed to restore or preserve equal access to the University's education program or activity.

18.2 Appropriate remedies, as determined by the particular circumstances of the matter, will be provided to a complainant where a determination of responsibility for Title IX sexual misconduct/harassment has been made.

18.3 Remedies may include the examples given as supportive measures, and other action designed to address, end, remedy and prevent recurrence.

18.4 Remedies that do not directly affect the respondent will not be disclosed to the respondent (e.g., academic adjustments made for the complainant to restore equal access to the University's education program or activity).

## 19.0 APPEALS

### 19.1 Appeal of Dismissal of Formal Complaint:

19.1.1 A complainant or respondent may appeal the dismissal of a formal complaint, or allegations therein, within 10 university business days of the date of the notice of the dismissal.

19.1.2 Appeals must be submitted, in writing, to the Title IX Coordinator.

19.1.3 The appeal must include a written statement providing the specific grounds for appeal outlined below, along with any further statement in support of or challenging the dismissal.

19.1.4 Each party is limited to a single appeal of the dismissal of the Formal Complaint.

### 19.2 Appeal of Written Determination of Responsibility:

19.2.1 A complainant or respondent may appeal the written determination of responsibility within 10 university business days from the date of the written determination of responsibility.

19.2.2 Appeals must be submitted, in writing, to the Title IX Coordinator.

19.2.3 The Title IX Coordinator will notify the following people of the appeal: Parties to the complaint; and The appellate decision maker(s).

19.2.4 Each party is limited to a single appeal of the written determination of responsibility of the Formal Complaint.

19.3 The appeal must include a written statement providing the specific grounds for appeal outlined below, along with any further statement in support of or challenging the determination of responsibility.

### 19.4 Grounds for Appeal:

19.4.1 Procedural irregularity that affected the outcome of the matter;

19.4.2 New evidence not reasonably available at the time the determination was made, that could affect the outcome of the matter; and

19.4.3 The Title IX Coordinator, Deputy Title IX Coordinators, investigators or decision-maker(s), involved in the grievance resolution process, had a conflict of interest or bias, for or against, complainants or respondents generally or the individual complainant or respondent, that affected the outcome of the matter.

### 19.5 Notice of Appeal and Opportunity to Respond:

19.5.1 The parties will be notified, in writing, if an appeal is filed.

19.5.2 The non-appealing party shall have five university business days from notification of the appeal to submit any response.

19.5.3 The parties will be provided with the appeal and any written response thereto.

### 19.6 Decision of Appeal:



19.6.1 The appeal decision-maker(s) will be an official other than the decision-maker(s) that reached the decision being appealed, and likewise will not be the investigator(s), Title IX Coordinator or Deputy Title IX Coordinators.

19.6.2 Within 15 university business days of receipt of all documents from the parties, including any response from the non-appealing party, the appeal decision-maker(s) will issue a final written decision which specifies the result of the appeal and rationale for the result.

19.6.3 This final determination will be simultaneously provided to the parties. Reasonable efforts will be made to deliver the outcome to the parties contemporaneously.

## 21.0 RECORD RETENTION

21.1 The following documents created pursuant to this Policy will be maintained for seven years, subject to any disclosure limitations by law or regulation:

Each Title IX sexual misconduct/harassment investigation, including any determination about responsibility; Any audio or audiovisual recording or transcript of a hearing under this grievance procedure; Any disciplinary sanctions imposed upon a respondent;

Any remedies provided to the complainant designed to restore or preserve equal access to the University's education program or activity;

Any appeal and the result; Any informal resolution and the result therefrom;

All materials used to train Title IX Coordinator, Deputy Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

21.2 Records under this section will be maintained in the Office of Title IX and ADA Compliance in a protected environment. Any electronic data must be stored in an encrypted manner in accordance with the University information security policies and procedures.

## 22.0 CONDITIONAL AMNESTY FOR STUDENTS

In deference to its compelling interest to promote and protect a learning, living and working environment free from sexual misconduct/harassment, the University has elected not to pursue any related recreational alcohol and other drugs use/possession violations against a student who reports to be a victim of sexual harassment/sex-based discrimination under this policy or against a student named as a respondent, or student(s) who are witnesses or reporters, as may be appropriate under the circumstances. In some instances, the University may explore educational interventions with a student in the interests of their health and safety, but no conduct proceedings will result should conditional amnesty be granted.



The University may deny amnesty from students found to have been engaging in drug or alcohol use/possession violations that harmed another person specifically, (e.g., intentionally using drugs or alcohol to facilitate a sexual assault or other sexual violence) or the campus community generally including, but not limited to, sale or distribution of drugs and/or alcohol. This provision does not apply to employees of the University.

## 23.0 TRAINING

23.1 Winthrop University has a compelling interest to promote and protect a learning, living and working environment free from sexual misconduct/harassment, and therefore, requires all students and employees to complete annual training on interpersonal violence prevention.

23.2 The University provides training to its Title IX Coordinator, Deputy Title IX Coordinators, investigators, decision-makers, potential advisor pool, and any person who facilitates an informal resolution process. The training shall generally include information about the following: Definition of Title IX sexual misconduct/harassment; Scope of the University's education program or activity; How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable; and How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias.

23.3 Decision-makers also receive training on any technology that will be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

23.4 Investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

23.5 Training materials used to train Title IX Coordinator(s), investigators, decision-makers, and any person who facilitates an informal resolution process, shall be posted and made available for review in the Office of Title IX and ADA Compliance and its associated website(s).

## **4. Procedures:**

This section was intentionally left blank.

## **5. Resources:**



Non-Discrimination and Anti-Harassment Policy

Student Sexual Misconduct Policy

Workplace Violence Policy

Student Code of Conduct

**6. History of Revisions:**

07/11/2023      Policy first established