

Policy Number/Title:	3.1.2 Student Sexual Misconduct Policy
Effective Since:	01/01/2016
Last Revision Approved:	01/01/2016
Responsible Office:	Student Affairs

1. Scope:

Winthrop University Students

2. Definitions:

This section is intentionally left blank.

3. Policy:

Title IX

Title IX of the Education Amendments of 1972 protects people from discrimination based on sex in educational programs or activities which receive Federal financial assistance, specifically stating, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...” 20 U.S.C

Introduction

Winthrop University is an educational community committed to common standards of integrity and respect for all of its members. All members of the Winthrop community, guests, and visitors have the right to be free from sexual harassment and sexual misconduct; and such behavior will not be tolerated by the Winthrop community. Winthrop is committed to taking immediate, equitable, and effective actions to respond to sexual harassment and sexual misconduct to prevent its reoccurrence and to address its effects. For purposes of this Policy, sexual misconduct is always considered a form of sexual harassment; and the term sexual misconduct is used unless there is a specific reference to sexual harassment as defined in the Student Conduct Code. Sexual misconduct can occur in many relationships and may involve, “... offensive touching; non-consensual sexual assault; forced sexual assault; stalking; or sexual exploitation and other sexual misconduct violations” (Winthrop University Student Handbook, Student Conduct Code).



This behavior interferes with the educational mission of the University by:

- Endangering the physical and emotional safety of community members
- Damaging trust in the community
- Offending the dignity and violating the autonomy of community members
- Disrupting the academic progress of victims or survivors during their recovery

Winthrop University will review all reports of incidents that fall under Title IX (offensive touching, stalking, all forms of sexual assault, sexual exploitation, sexual harassment, domestic/intimate partner/ relationship violence, bullying, etc.), regardless of where the conduct occurred to determine whether the conduct occurred in the context of an educational program or had continuing effects on campus or in an off-campus program or activity.

Purpose of the Policy

The purpose of this policy is to provide students and other members of the University community a description of how the university will respond when a student or another person reports an incident of sexual harassment or sexual misconduct: intermediate actions that will be taken to ensure the safety of students, the procedures that will be followed to investigate the allegation, the breadth of sanctions that could be imposed if there is a finding of responsibility, protections that will be afforded to the reporting party and to the responding party, and the relationship of this policy with all other university policies dealing with a similar subject matter.

Coverage

This policy and all processes associated with this policy applies to Winthrop University students, as well as all of applicants for admission to the university while applicants are on university property or university-related premises, when involved with off campus Winthrop activities, or when participating in a university program or activity. Winthrop students will be held accountable to this Policy and the accompanying Student Conduct Code violations for their off-campus activities when it can be ascertained the off-campus act has a direct, detrimental impact on the university's educational functions. Any disciplinary action imposed by Winthrop may precede and be in addition to any penalty imposed by an off-campus authority. This Sexual Misconduct Policy applies to all such conduct by a student while a student, even if it occurs outside of an academic term or when the student is not otherwise enrolled at Winthrop University such as on leave, or withdrawn temporarily indicating an intent to return to the University. Any sexual misconduct incident involving Faculty or Staff or a third party will be handled through the Human Resources referral process.



Related Policies

This policy relates to students when another student is alleged to have committed the offense. The Student Conduct Code further defines processes and additional violations. This Sexual Misconduct Policy is consistent with the policies stated in the Student Handbook; but should there be a conflict, this policy is controlling. There are other University policies through the Office of Human Resources that direct the University's response to an allegation of sexual harassment or sexual misconduct by an employee against a student or an employee against another employee. Other specific policies include The Non-Discrimination and Anti-Harassment Policy and the Internal Process for Responding to Student Reports of Sexual Harassment and Workplace Violence. These policies are provided on the Human Resources web site and are also available in the Office of Human Resources, 303 Tillman Hall.

Definitions and Descriptions

To assist in understanding this policy, definitions of behaviors associated with violations of this policy and all terms relevant to how the University receives and responds to reports of sexual misconduct, are provided below. The behaviors that fall under this policy are also Prohibited Behaviors as found in the Student Conduct Code. The definitions are expanded for clarity.

Coercion-

Coercion is unreasonable or persistent pressure for sexual activity. Persistent pressure past a refusal or an indication that a person does not want sexual contact, that they want to stop, or that they do not want to go past a certain point of sexual interaction, is considered non-consensual. In situations involving Intimate Partner Violence (IPV)/ stalking, coercion is defined as restraint or domination by force or the threat of such acts. Coercion may also be an implied threat such as blocking an exit until the person provides the desired sexual activity. Sexual activity with someone, who based on the circumstances one should reasonably have known to be, mentally or physically incapacitated by alcohol or other drug use constitutes a violation of this policy.

Consent-

Understanding Winthrop University's definition of consent is critical to interpreting this policy and determining if any violation of this policy occurred. The following definition addresses what constitutes consent and what is NOT consent. When determining if consent was mutually established, the totality of the circumstances, including the context of the interaction and the relationship between involved parties will be taken into consideration.

Consent is:

- Informed;

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- Mutually established
- Freely and actively given;
- Communicated through mutually understandable words or actions;
- Indicated by a willingness to participate
- Mutually agreed upon sexual activity.

Further:

- Initiators of sexual activity are responsible for obtaining mutually established consent.
- Silence or passivity is not established consent.
- Consent CANNOT be obtained through the use of physical force, violence, duress, intimidation, coercion, or the threat, expressed or implied, of bodily injury.
- The use of intimidation, coercion, threats, force, or violence negates any consent obtained.
- Previous relationships or prior consent does not imply consent to future sexual acts.
- Consent is not established if obtained from an individual who is incapable of making informed or rational judgements. Including one or more of the following conditions:
 - A mental, intellectual, or physical disability; or
 - is under the legal age to give consent; or
 - is asleep, unconscious, or physically helpless; or
 - Is incapacitated by alcohol or other drugs.
- Consent must be established between each individual participant in any given sexual activity.
- A person may withdraw consent verbally or through other clear indications at any time.
- Refusal, lack of consent, or non-consent may be expressed in many ways, verbally or physically.
- Physical resistance is not necessary to communicate a lack of consent.

Force-

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that overcome resistance or produce consent (“Have sex with me or I’ll hit you. Okay, don’t hit me; I’ll do what you want.”).

Incapacitation-

Incapacitation is a state where someone cannot make rational, reasonable decisions and lacks the capacity to give knowing consent. For purposes of this policy, incapacitation is defined as a state beyond drunkenness or intoxication. A person who initiates sexual activity must look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may manifest signs of incapacitation differently, typical signs include:

- Slurred or incomprehensible speech
- Unsteady gait
- Combativeness or emotional volatility
- Vomiting or incontinence.

A person who is incapacitated may not be able to understand some or all of the following questions:

- “Do you know where you are?”
- “Do you know how you got here?”
- “Do you know what is happening?”
- “Do you know whom you are with?”

For purposes of evaluating whether consent was mutually established, the University considers three questions: Did the person initiating sexual activity knowingly incapacitate a person and then engage in sexual activity? Did the person initiating sexual activity know that their partner was incapacitated? And if not, Should a sober, reasonable person in the same situation have known that their partner was incapacitated? If the answer to any of these questions is “yes,” mutually established consent was absent.

Because the impact of alcohol and other drugs varies from person to person, one should be cautious before engaging in sexual contact or intercourse when either party has been drinking alcohol or using other drugs. The introduction of alcohol or other drugs may create ambiguity for either party as to whether mutually established consent has been sought or given. If one has doubt about either party’s level of intoxication, the safe thing to do is to forgo all sexual activity.

Intimate Partner Violence-

Intimate Partner Violence is a controlling, abusive, and aggressive behavior in a romantic relationship it can happen in any relationship regardless of the gender identities of individuals in the relation. It can include verbal, emotional, physical, or sexual abuse, or a combination may include but is not limited to:

- Physical abuse (e.g., slapping, pulling hair, punching)
- Threats of abuse (e.g., threatening to hit, harm or use of a weapon on another or self, or other forms of verbal abuse)
- Emotional/psychological abuse (e.g., harassment, name calling, manipulation) that creates and maintains a degrading environment;
- Sexual abuse (e.g., forced sexual conduct and/or any behavior that meets the definition of sexual assault).

Investigator-

The investigator is a neutral fact finder who is designated by the University to conduct the initial inquiry of any offense covered by Title IX and the Winthrop University Sexual Misconduct Policy and if the facts support it, conduct a full investigation. Any next steps would be in consultation with the reporting party.



Report-

A Report is a reported allegation of Sexual Misconduct asserted against another party.

Reporting Party-

A Reporting Party (RP) is an individual who reports or files a report alleging that they are the victim of an offense that falls under Title IX (sexual misconduct and/or bullying). Should the report filed go to the University conduct system then the University becomes the Complainant.

Reporting Party Advisor-

The Reporting Party Advisor (RPA) is the person selected by the Report to provide support for them as they go through the Title IX Grievance Procedures. The RPA may accompany the Reporting Party to meetings, interviews and any judicial hearings. The RPA may not speak for the student under any circumstances. The Victim Services Coordinator may also act as an advisor and accompany the RP throughout the process.

Responding Party-

The responding party is an individual who has been accused of committing a Title IX related offense (sexual misconduct and/or bullying) by the report or filing of a formal or informal Report.

Responding Party Advisor-

The Responding party Advisor is the person provided by the University to provide knowledgeable support for the responding party throughout the process of a Title IX Grievance Procedure. The Responding party Advisor may accompany the Responding party to meetings, interviews and any judicial hearings. The Responding party Advisor may not speak for the student under any circumstances (this matches what reporting party advisor says). The responding party may also have an advisor as provided in the University Student Conduct Code page to accompany them.

Responsible Employee-

A Responsible Employee is, for the purpose of this Policy, a person responsible for reporting sexual misconduct to the identified University Administration, specifically the Deputy Title IX Coordinators. The following individuals are the University's Responsible Employees:

- All Vice Presidents, Assistant Vice Presidents, Provosts, Deans, Department Chairs, Directors, Advisors, Faculty and Coaches
- All Campus Police Officers and Staff
- All Deputy Title IX Coordinators
- All Human Resources Staff
- All Student Life Staff and student leadership staff (Including Resident Assistants, Orientation Leaders, etc.)

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- Student Staff who serve in a mentorship role (i.e., Peer Mentors, Reach Peer Mentors)
- All employees serving in a supervisory or management role (including, for purposes of clarity, all employees who supervise activities or programs that involve direct contact with students).

Retaliation-

Retaliation is any adverse action threatened or taken against a person because he or she has filed, supported, or provided information in connection to a report of Sexual Misconduct, including but not limited to direct and indirect intimidation, threats, and harassment.

Sexual Assault-

Sexual assault refers to any unwanted sexual acts that involve threats, physical force, intimidation or deception. Sexual assault can be defined as one or more of the following:

A. **Offensive Touching:** The touching of an unwilling person's intimate parts; touching an unwilling person with one's own intimate parts; causing an unwilling person to touch another's intimate parts.

B. **Non-Consensual Sexual Assault:** Unwilling or nonconsensual penetration of any bodily opening with any objects or body part.

C. **Forced Sexual Assault:** Requires the use of physical force and/or penetration. Coercion, the threat of immediate physical harm, the restriction of movement, and/or the administration of a drug, intoxicant or a physical substance that impairs the faculties of a person would all constitute forced sexual assault.

Sexual Harassment-

Sexual harassment is unwelcome conduct of a sexual nature, which includes unwelcome sexual advances; requests for sexual favors; and other verbal, non-verbal, electronic, or physical conduct of a sexual nature that is severe or pervasive and objectionably offensive, such that it undermines the victim's educational experience and denies equal access to an institution's resources and opportunities.

Stalking-

Stalking is a pattern of repeated, unwanted attention and contact that causes fear or concern for one's own safety or the safety of someone else (e.g., family member or friend). Some examples include repeated, unwanted phone calls, emails, or texts; leaving cards, letters, flowers, or other items when the victim does not want them; watching or following from a distance; spying; approaching or showing up in places when the victim does not want to see them; sneaking into the victim's home or car; damaging the victim's personal property; harming or threatening the victim's pet; and making threats to physically harm the victim.

[Cyber] stalking-



[Cyber] stalking is threatening communication or unwanted advances directed at another person using the Internet and other forms of online and computer communications. It can involve the use of email, instant messaging, chat rooms, bulletin boards and/or other electronic communication devices to repeatedly harass or threaten another person. Other types of sexual exploitation may include but are not limited to:

1. Using university computers to display in public places obscene material that is offensive to others [as described in SC Code of Laws, Article 3. 16-15- 305 (Obscenity)] or to access child pornography [as Described in SC Code of Laws, Article 3. 16-15-395 & 405 (Sexual Exploitation of a Minor)].
2. Indecent exposure / exhibitionism.
3. Voyeuristic behavior.
4. Unsolicited offensive communications.

Roles of the University officials charged with the implementation of the Sexual Misconduct Policy and Title IX administration.

Title IX Coordinator-

Title IX Coordinator is the Winthrop employee who is responsible for coordinating Winthrop's compliance with Title IX. The Title IX Coordinator's responsibilities include overseeing all reporting party of sex discrimination and identifying and addressing patterns of systemic problems that arise during the review of such reports. The Title IX Coordinator may assign Deputy Coordinators to handle given reports/complaints about Winthrop University students, staff, or faculty.

Victim Services Coordinator-

The Victim Services Coordinator is the person provided by the University to provide knowledgeable support for the reporting party throughout the process of resolving a Title IX report. The VSC may accompany the reporting party to meetings, interviews and any judicial hearings. The VSC may not speak for the reporting party at a judicial hearing. The reporting party may also have an advisor as provided in the University Student Code of Conduct page 61 to accompany them.

[Primary] Witness-

If, through an investigation there is sufficient information to believe that a violation of this Policy occurred, the individual making the allegation becomes the primary witness and the University assumes the role of reporting party throughout the hearing process.

Review Panel-

The Review Panel is a team of University officials assigned to review the investigative report following an investigation, or the facts discovered during a preliminary inquiry, when deemed necessary by the Title IX Coordinator . Review panels will consist of no less than three university officials, and will be hand-picked by the Title IX Coordinator.



Student Disciplinary Process

All students and student organizations are subject to disciplinary procedures prescribed in the Student Conduct Code. The Department of Student Affairs bears the responsibility for the initiation of disciplinary procedures against a student for alleged misconduct which could result in expulsion or suspension from the University. The Deputy Title IX Coordinator or Investigator will review and/or investigate reported allegations of sexual misconduct to determine if disciplinary proceedings should be initiated. For purposes of sexual misconduct, any person may register a report with the Department of Affairs against a student for an alleged violation of the Student Conduct Code as it pertains to Sexual Misconduct or any other University policy. See the Student Handbook for more information.

Reporting Sexual Misconduct

Winthrop University is committed to eliminating any and all hostile environments, remedying the effects of sexual misconduct, and preventing its reoccurrence. Therefore, all students are encouraged to report any instance(s) of sexual misconduct. Reporting the incident allows University authorities to form a prompt and appropriate response. A student who believes they are a victim of sexual misconduct has several avenues for initially reporting the incident.

Consultation

A victim, witness, or advisor may request a meeting with the Investigator (s) to discuss the allegation and to determine if there is reason to believe that a sexual misconduct violation has occurred. Disciplinary procedures will be reviewed at this meeting, and the process for going forward within the University system will be discussed. A friend, advisor, or parent may be present at this meeting at the victim's request. A victim does not have to make an immediate decision but will have time to gather information and make an informed decision.

Where to report

- *Online*- You can report any form of Sexual Misconduct online, from a computer, tablet, or mobile device, using Winthrop's Sexual Misconduct Reporting Form: https://cm.maxient.com/reportingform.php?WinthropUniv&layout_id=2 . The form allows for anonymous reporting and gets routed to the Office of Victim's Assistance, the Title IX Coordinator, and to the Deputy Title IX Coordinator. The form also allows for an option to report to law enforcement.
- *Campus Police* - Victims of sexual misconduct have the right to file criminal reports. The University will not discourage a student from filing a criminal report and will explain that by reporting the incident to Campus Police steps to ensure safety can be initiated. If the reporting party chooses, Campus Police will initiate a timely investigation including interviewing all witnesses. The victim will receive information

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regarding the progress of the case and will retain the option of prosecuting the case criminally with Campus Police will explain the details associated with criminal prosecution. This will include evidence collection, working with other jurisdictions, and testifying in court. The Victim Advocate in Campus Police will be present during evidence collection, court process, and on an ongoing basis to support the victim. Police reports are forwarded to the Dean of Students Office and the Victim Services Coordinator for further review. Contact: Chief Ken Scoggins or Chief Investigator Wes Wiles at (803) 323-3333.

- *Victim Services Coordinator*- the Office of Victim Assistance (OVA) works specifically with University students who have reported an incident of alleged sexual misconduct. It does not matter where the victimization occurs, on or off campus, or whether or not the student elects to file a police report. OVA services are available to any current student. The Victim Services Coordinator is available to: coordinate immediate medical intervention; explain the purpose of receiving a rape protocol exam performed by the Sexual Assault Nurse Examiner (SANE) and coordinate transportation to the location for such an exam; provide initial support; assist the student in accessing mental health counseling; assist the student, if he/she chooses, in filing a report with the appropriate law enforcement agency; accompany and/or act on behalf of the victim, as needed; discuss possible accommodations; assist in arranging meetings or initiating direct contact with the Deputy Title IX Coordinator or Investigator to provide additional information regarding on-campus procedures for resolving reports of sexual misconduct.
- *Dean of Students Office* - The Dean of Students Office (DOSO) will refer a student to on and off-campus resources should the student wish to move forward with the process. You may make contact by calling (803) 323-4503.
- *Any Responsible Employee*- When students report allegations of sexual misconduct or bullying to Residence Life Staff including RAs), Student Affairs Staff, Faculty and Staff, and other Campus Security Authorities (see the list under Limited Confidential Reporting), the student will be referred to the Victim Services Coordinator for assistance and the Dean of Students Office for additional information on services and processes available for intervention. Students will then be contacted by the Victim Services Coordinator to arrange for any services, accommodations, and further actions as described by this Policy.

Anonymous Reporting

South Carolina law guarantees that a victim may receive services while choosing not to report to law enforcement. If a medical examination is completed the information that is acquired through the medical examination performed by the Sexual Assault Nurse Examiner (SANE) is maintained anonymously and given a number rather than a name. The SANE nurse will explain the legal options and the benefits of reporting to law enforcement. The evidence will be retained for up to one year, should a victim decide to press charges. South Carolina law guarantees that if a victim while chooses not to report to law enforcement, they may still receive a free sexual assault examination, treatment for sexual



transmitted diseases, and medication for pregnancy prevention. A victim can still access campus resources such as the Victim Services Coordinator, Health and Counseling Services, and the Dean of Students Office while reporting anonymously. The University will follow the procedures outlined in this Policy in cases of anonymous reporting.

Common Reporting Concerns

Confidentiality - Students reporting incidents of sexual misconduct are often concerned for their privacy and have questions about confidentiality. There is a legal difference between privileged reporting and limited confidential reporting.

Privileged Reporting - Privileged reporting consists of those communications that legally cannot be disclosed, without the reporter's consent, to any other person, except under very limited circumstances such as an imminent threat of danger to self or others. When reporting to a privileged source, the information shared between the reporting person and the care provider is privileged and ordinarily will not be disclosed even to a member of the University community.

Examples of Privileged Reporting Resources:

- Counseling Staff (Psychiatrists, Psychologists, Licensed Counselors, and Social Workers)
- Health Service Staff (Nurses or Nurse Practitioners)
- Campus Ministry (ordained minister, priest, or rabbi)

Limited Confidential Reporting - Limited confidential reporting consists of those communications that will not be disseminated to others except on a need-to-know basis. A limited confidential reporting source has the obligation to enlist designated campus resources to ensure that necessary steps are taken to ensure the safety of the campus community as a whole as well as its individual members. Such disclosures will be limited to a finite group of people all with the same confidentiality obligations. These steps will include investigating the incident and disclosing the confidential communications to others on a need-to-know basis.

Examples of Designated Limited Confidential Reporting Resources:

- Residence Life- Director, Assistant Directors, RLCs and RAs
- Victim Services Coordinator
- The Department of Student Affairs – DOSO, Office of Student Activities, etc.
- Faculty
- All other Campus Security Authorities
- Athletics Staff

Requests for Anonymity

In all cases when there is an allegation of sexual misconduct, the University has an obligation to take steps to limit the effects of the alleged sexual misconduct and prevent its recurrence. When a student requests that their name not be used, the University will



evaluate the request considering the following factors: the seriousness of the alleged sexual misconduct and whether there have been other sexual misconduct reports about the same individual. The University will inform the victim if it cannot ensure confidentiality and must proceed with an inquiry. When anonymity is maintained, the University's ability to respond is limited. In cases where the reporting party wants to proceed with an on-campus resolution, the University cannot keep the reporting Party's identity from the alleged student. Sexual misconduct is a serious offense and the University has a responsibility to provide equity as it responds to and resolves the reported misconduct. Therefore, if the responding party has been named, then the responding party has the right to know the identity of the reporting party.

Parental/Legal Guardian/Partner Notification

When and if parents and/or legal guardians are contacted is a decision the victim should make unless there are extenuating circumstances. The Title IX Coordinator, Deputy Title IX Coordinator (s), or the Victim Services Coordinator can assist a student with notification. In some instances when there is a significant health or safety concern, the University may need to notify the parents, guardian, or partner of the reporting party. In making this determination, the University will consider the wishes of those involved, their personal safety, and the safety of the campus community.

Timely Response to Reports

Except for good cause, and taking into account pending workload requirements, other assigned cases, and the complexity of the report, the University will make a good-faith effort to investigate and resolve cases in a timely manner. The period of time from the filing of a report, or the University's decision to investigate a matter, to the completion of the case and final notification of the outcome shall, generally, not exceed 60 calendar days.

Amnesty for Alcohol Use

In deference to its compelling interest to end sexual misconduct, the University will not pursue disciplinary action for alcohol use/ possession violations against a student who reports they are a victim of sexual misconduct or against a students named as a responding party.

Previous Relationship Concerns

Evidence of a reporting party's past relationships with anyone other than the responding party will not be considered as substantial evidence.

Conflict of Interest

The reporting party or responding party may challenge the participation of the investigator and/or Deputy Title IX Coordinator for cause. Cause is defined as personal bias, prior involvement, or inappropriate access to information concerning the incident. The removal of one of these parties will be at the discretion of the Title IX Coordinator. If the case goes



before the Judicial Council, the reporting party or responding party may also challenge the participation of a council member for the reasons listed above. The removal of a Judicial Council member for cause will be at the discretion of the remaining council members, as determined by majority vote.

University Coordination if there is a Criminal Investigation or Prosecution

The University will respond to and cooperate with law enforcement authorities in such investigations. Once the criminal investigation is complete, the Deputy Title IX Coordinator or Investigator will proceed with the University investigation. It may be necessary, however, for the University to take interim actions before the completion of the initial police investigation. Even if the responding party is charged with a crime once the criminal investigation is complete, the University will not postpone its ensuing investigation for the reported sexual misconduct.

Regardless of whether a Reporting Party elects to file a criminal report or initiate a civil lawsuit, the reporting party is entitled to access to the University disciplinary process and to receive appropriate interim actions and remedies by the University that may be warranted under the circumstances. Upon completion and review of an inquiry and or complete investigation the Deputy Title IX Coordinator may recommend that a charge be filed and conduct procedures against the alleged be initiated. A Reporting Party has a right to proceed with a criminal investigation and a Title IX report simultaneously.

Preliminary Inquiry

Once a report has come to the attention of the Title IX Coordinator, a preliminary inquiry will be conducted. The inquiry is done to evaluate and decide if interim action is needed to end the sexual misconduct, eliminate any hostile environment and its effects, and prevent the recurrence. The Investigator or Deputy Title IX Coordinator will conduct the preliminary inquiry into the alleged sexual misconduct. If there is sufficient information to determine that the allegations are credible, the matter will proceed in accordance with this policy. If there is insufficient basis to believe material elements of sexual misconduct as defined are present, both the reporting and responding parties will be notified, and the reporting party shall be advised of their right to ask that the decision be reviewed by the Title IX Coordinator. Such a request shall be filed in writing or via email, within 5 business days of notification by the investigator, and the Coordinator shall have an additional 5 days from the receipt of the appeal to either dismiss the matter or request further information from the investigator. This determination does not preclude reasonable accommodations and others actions to address concerns related to retaliation. The University reserves the right to conduct a preliminary inquiry and take action regardless of whether a student files a written report, asks the University to take action, or identifies the behavior as a form of discrimination.

Interim Actions

The University reserves the right to take necessary measures in response to an allegation of sexual misconduct in order to protect students' rights, ensure personal safety and address



concerns for retaliation. The University will consider the rights and concerns of both the reporting party and the responding party when determining interim actions.

Such measures may include but are not limited to:

- Modification of living arrangements.
- Interim suspension from campus pending a hearing.
- Classes reassigned so the parties involved do not share classes.
- Limitations placed on access to certain University facilities or property.
- Limitations of a student's eligibility to enjoy certain privileges or participation in or attendance at certain events or activities.
- Limitations in terms of one's ability to participate on a team or activity.
- Temporary limitation of a student's eligibility to communicate (verbal, written, or electronic, or through another individual) with identified students, staff, or faculty members.

Investigations

The information gathered during the initial inquiry and wishes of the reporting party will determine if the University proceeds with a full investigation. Investigations will vary based upon the circumstances and availability of information. All investigations are completed by trained investigators who conduct an impartial investigation. Throughout any University-led Title IX investigation, the reporting party and responding party will be treated equitably. The process of fact gathering will involve interviews of the reporting party, the responding party, and other witnesses. Information, including witnesses, may be provided by both the reporting party and the responding party. Investigators may also choose to bring in witnesses that they deem necessary to the fact finding. Both parties may also access all documents relevant to the

case, including incident reports, written statements from the parties and witnesses, campus police reports if available, and any other pertinent information.

The investigators will keep the parties informed of the progress of the investigation and take reasonable measures to assure that each party has an opportunity to review documents and information that are parts of the investigation. At the conclusion of the investigation, each party will have the opportunity to review the investigative report and be informed of the next steps. Depending on the outcome of the investigation, the next steps could include: initiating the disciplinary process for violation(s) of the Student Conduct Code, determining alternative resolutions, no further action due to insufficient information or the wishes of the reporting party.

If the nature of the misconduct and the information gathered during the subsequent investigation give reason to believe that the reporting party or other members of the University community may be at continued risk, then the University may choose to pursue the matter without the cooperation of the reporting party. If the University investigation determines that there is insufficient information to support a violation of the Winthrop University Student Conduct Code then both parties will be informed. Both the reporting



party and the responding party may contest the University's decision to take no further action by asking that the decision be reviewed by the Title IX Coordinator.

Alternative Resolutions

Alternative Resolutions Alternative resolution is generally pursued when the reporting party, having been fully informed of all available options, has explicitly made that choice, and if based on the information known about the incident, the Investigator or Deputy Title IX Coordinator believes such a resolution appropriate. The following factors will be taken into consideration when determining if an alternative resolution would serve as an appropriate means to resolve a case:

- Whether the misconduct involved physical violence or force. "Physical violence" or "force" means exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon
- Whether the misconduct was facilitated through the use of "date-rape" or similar drugs or intoxicants;
- Whether the misconduct occurred while the reporting party was unconscious, physically helpless, or unaware that the prohibited conduct was occurring;
- Whether the responding party is the subject of prior reports and/or complaints related to any form of prohibited conduct, has prior arrests, has any history of violent behavior;
- Whether the responding party has a history of failing to comply with any University-issued No Contact order ;
- Whether the responding party has threatened to commit violence or any form of prohibited conduct;
- Whether the incident involved multiple responding parties;
- Whether the report reveals a pattern of prohibited conduct (e.g., by the Responding party, by a particular group or organization, around a particular recurring event or activity, or at a particular location);
- Whether any other aggravating circumstances or signs of predatory behavior are present.

Alternative resolution can take place after the preliminary inquiry, during the formal investigation, or after its conclusion. If alternative resolution is deemed appropriate, the Deputy Title IX Coordinator will contact the reporting party. If the reporting party agrees, the Deputy Title IX Coordinator will then contact the responding party. If both parties are satisfied with the proposed resolution and the Deputy Title IX Coordinator believes the resolution satisfies the University's obligation to provide a safe and non-discriminatory environment for all students, the resolution will be implemented, the investigation will be concluded, the matter will be closed and both parties will be provided with written notice of the resolution. If these efforts are unsuccessful, the investigation will ensue or resume. If the investigation has been completed then next steps in the disciplinary process may proceed. Before starting these discussions, the Title IX Coordinator will notify the reporting



party and responding party in writing that each has the right to end the alternative resolution process at any time. Examples of alternative resolution can include, but is not limited to the following:

1. With the agreement of both parties, a meeting can be facilitated by the Investigator or Deputy Title IX Coordinator. The purpose of this meeting would be to provide an opportunity for a guided conversation between the reporting party and responding party around well-defined and pre-arranged topics. This is not an option for cases involving sexual violence (i.e. sexual assault, all forms of relationship/intimate partner violence, interpersonal violence, or severe misconduct)
2. At the discretion of the Deputy Title IX Coordinator, the responding party may be required to complete certain educational remedies or experiences that would assist the student with the concerns that contributed to or were aggravating in the alleged incident. Examples include but are not limited to; an alcohol/drug education program, an assignment demonstrating proof of understanding the University's definition of consent, or involvement or participation in other educational programs. Educational experiences would be designed not to conflict with the responding party's ability to participate in campus life and would not be considered in any University setting as an admission of responsibility. The reporting party may also be asked to agree to educational activities that are designed to provide an equitable response to the circumstances that brought about the allegation and to ensure that there is clear agreement on situations in which the parties could be in proximity.

At the discretion of the Title IX Coordinator, interim actions as described in this policy may be continued through and beyond the imposition of the alternative resolution. Either party may request to cease alternative resolution proceedings at any time and request that another process be initiated to resolve the report.

Campus Disciplinary Procedures for Cases Involving Sexual Misconduct

When the University determines there is sufficient information to support a violation of the Student Conduct Code, a notification letter will be issued to the reporting party. Resolving alleged violations involving any form of sexual misconduct will be handled by the University according to the procedures outlined in the Student Conduct Code found in the Student Handbook, unless otherwise specified in these procedures. Students who accept responsibility or are found responsible for violations of sexual misconduct will be subject to sanctions from the University as determined by the hearing authority handling the case. In addition to individuals, student organizations can be charged, found responsible, and sanctioned for violations of the Student Conduct Code as it pertains to Sexual Misconduct. Sanctions for student organizations found responsible for violations are consistent with those found in the Student Conduct Code, located in the Student Handbook. Resolving an allegation through the student disciplinary system does not prevent a simultaneous action



being taken in the appropriate criminal court off campus. In addition to any sanction that may be imposed by the University, a perpetrator of sexual misconduct may be subject to criminal sanctions and personal civil liabilities independent of those imposed by the University.

Roles in the Disciplinary Process for Sexual Misconduct

The student alleged of the violation will still be referred to as the responding party. The original reporting party will become the primary witness and the Deputy Title IX Coordinator will serve as the Reporting party and presenter of the record in the disciplinary hearing.

Standards of Accountability

In compliance with the federal directives of Title IX, a preponderance of the evidence is the standard adopted by this Policy to determine if a student has engaged in sexual misconduct. A preponderance of the evidence means that credible information shows it is “more likely than not” that the responding party violated this policy. It should be clear that the standard of proof required for the conviction of a crime, beyond a reasonable doubt, is different from the standard of proof used to determine whether a violation of this Policy occurred. Therefore, the outcome of a police investigation or criminal proceedings is not determinative of whether the alleged sexual misconduct violates this policy. Subsequently, conduct may constitute sexual misconduct under this Policy even if law enforcement authorities lack sufficient evidence of a crime and decline to prosecute.

Hearing Authority

The Judicial Council will be the hearing authority for all cases involving allegations of sexual misconduct, in which the reporting party does not accept responsibility for the violation.

The primary witness and/or responding party do not have to be present as a prerequisite to proceed with a disciplinary hearing.

Equity in Investigatory Processes and Hearings

Throughout any University investigation of a violation of this policy, including at any hearing, the reporting party and the responding party will have equity in the process which includes: calling witnesses, presenting information, a timely review of material (including the statement of the other parties and the investigation summary), updates regarding the status of the investigation throughout the investigation, the right to have an advisor present at all meetings and proceedings, and notification of the outcome.

Impact Statements

If there is a finding of responsibility at a disciplinary hearing, both the responding party and the primary witness may be present impact statements to the hearing authority before deliberations for sanctions and remedies.

Multiple Disciplinary Allegations



Responding parties who have been charged with multiple violations of the Student Conduct Code in addition to sexual misconduct may request a hearing to determine responsibility for the other items before or after the sexual misconduct violations are heard. The Title IX Coordinator will consider the request in light of the circumstances, the coherence of the record if charges are separated, and the rights of the primary witness.

Notification of Any Special Arrangements for Hearings

During pre-hearing interviews with the primary witness and responding party, the Deputy Title IX Coordinator will consider any special arrangements for the hearing to accommodate concerns for personal safety, well-being, and/or apprehensions of the primary witness, responding party, and/or other witnesses during the hearing. This may include prescribed seating arrangements for the hearing, private waiting areas, a predetermined plan for entering and exiting the hearing room, and other means appropriate to the circumstances that do not violate principles of fundamental fairness for all concerned.

Sanctions and Remedies

The hearing authority is required to consider suspending or expelling any student who accepts or is found responsible for all violations of sexual misconduct; however, the hearing authority may impose any sanction that it finds to be fair and proportionate to the violation after considering any mitigating or aggravating circumstances. The hearing authority will also consider, as part of its deliberations, whether the sanction will (a) bring an end to the violation in question (b) remedy the effects of the violation on the primary witness and the University community, and (c) reasonably prevent the reoccurrence of a similar violation. The hearing authority may impose any sanctions in accordance with those as found in the Student Conduct Code as well as any remedies listed in his policy under interim actions or deemed otherwise reasonable.

Notice of Outcome

Both the responding party and primary witness shall receive written notice concurrently of the outcome of the hearing and any appeals that may follow. When the alleged conduct includes crimes of violence, the primary witness will receive a full report of sanctions. Primary witnesses will only receive information about sanctions that directly relate to the primary witness, when the alleged conduct does not involve crimes of violence.

Appeals

Both the responding party and primary witness may appeal the outcome of a disciplinary hearing consistent with Section VIII, Appeals, as found in the Student Conduct Code. The grounds for appeal are as follows:

A. On a claim of error in the hearing procedure. Appeals on such grounds must be presented, specifically described, in writing within five business days (excluding weekends and holidays) of the announcement of the decision.



B. On a claim of new evidence or information material to the case which was not available at the time of the hearing. Appeals on such grounds must be presented, specifically described, in writing within five business days (excluding weekends and holidays) of the new evidence having been discovered. If the appeal is being considered based on these grounds, then the appeal officer will allow the other party to respond in writing to the appeal request. If the appeal is allowed, the case is remanded to the original hearing authority for review. Consistent with the Student Conduct Code, the result of a responding party's appeal may not increase the sanctions ordered at the hearing. However, the sanctions and remedies may be increased as a result of a successful appeal by the primary witness in cases of sexual misconduct. The grounds for an appeal are the same for both parties.

Records

The Dean of Students Office will maintain a record of all preliminary inquiries, investigations, and disciplinary files that result from reports of sexual misconduct. Disciplinary records, which will include the initial inquiry, the investigation, and the disciplinary proceedings, will be maintained under the responding party's name as outlined in the Student Conduct Code. Preliminary inquiries that do not result in any further action beyond reasonable accommodations will be maintained under the reporting party's name. Investigations that do not result in disciplinary charges or do result in alternative resolution proceedings will be maintained under both the reporting parties and responding party's names in confidential Title IX files. These files are not part of a student's academic record.

Retaliation

The University prohibits adverse treatment of students for exercising their rights under this policy. Any good faith report of sexual misconduct, experienced or observed, should be made without fear of retaliation. Retaliation by any member of the University community against a student for filing a report or participating in an investigation in good faith is strictly prohibited by law and this policy. A student violator will be subject to disciplinary charges and/or summary action as outlined in the Student Conduct Code. A University employee would be subject to Human Resources policy and procedures.

Gender-Based Harassment

Gender-based harassment which may include acts of verbal, nonverbal, or physical aggression; intimidation; or hostility based on sex or sex-stereotyping but not involving conduct of a sexual nature is also a form of sex discrimination to which the University will respond, if it rises to a level that denies or limits a student's ability to participate in or benefit from the educational program of the University. Winthrop will respond to such harassment in accordance with the standards and procedures described in this policy. In assessing the totality of the circumstances to determine whether a violation of this policy occurred, incidents of gender-based harassment combined with incidents of sexual misconduct could create a hostile learning environment, even



if neither the gender-based harassment alone nor the sexual misconduct alone would be sufficient to do so.

Additional Duty for Reporting Child Abuse

Any faculty, staff, or student employee who suspects or has any concern regarding child abuse or neglect should report this information promptly to their Department Head, the Department of Human Resources, the Dean of Students, the Winthrop Police or another law enforcement agency, or Executive Officers. University officials who receive such reports shall consult with the University's Chief of Police who will determine the University's duty under the circumstances and, if determined appropriate, will assist in contacting the proper external authorities.

Federal Statistical Reporting Obligations

Certain campus officials have a duty to report sexual misconduct for federal statistical reporting purposes (Clery Act- <https://clerycenter.org/policy-resources/theclery-act/>). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the annual Campus Security Report.

This report helps to provide the community with a clear picture of the extent and nature of campus crime and to ensure greater community safety. Mandated federal reporters include: student affairs staff, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories), and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

Federal Timely Warning Reporting Obligations

Victims of sexual misconduct should also be aware that University administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The University will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

On-Campus Resources Available to Students

- Campus Police (803) 323-3333
- Office of Victim Assistance (803) 323-2206
- Dean of Students Office (803) 323-4503
- Health Services (803) 323-2206
- Counseling Services (803) 323-2206



- Residence Life (803) 323-2223

Policy Distribution

This Policy “must be widely distributed to all students, employees, applicants for admission and employment, and other relevant persons” (OCR, DCL, April 2011). As such it is posted on the Winthrop web sites under Student Handbook, Campus Police, Student Life, and Student Affairs.

SC Campus Sexual Assault Information Act and Title IX

This Policy may also be referred to as the University’s Sexual Assault Policy, as required by S.C. Code Ann. §59-105-40, and is the University’s student grievance procedures for the resolution of sex discrimination reports as required by Title IX.

Title IX Coordinator

The Title IX Coordinator is the Winthrop employee who is responsible for coordinating Winthrop’s compliance with Title IX. The Title IX Coordinator’s responsibilities include overseeing all reports of sex discrimination and identifying and addressing patterns or systemic problems that arise during the review of such reports. Winthrop University has designated Kevin Sheppard, Title IX Coordinator and ADA Compliance officer, to serve as the Title IX Coordinator to oversee compliance with Title IX. All incidents of sexual misconduct involving students that are reported to the University will be reviewed by the Title IX Coordinator. Students who believe they have experienced sexual misconduct or have questions about sex discrimination may contact:

Title IX Coordinator

Kevin Sheppard
105 Tillman Hall
Office: (803) 323-3928
sheppardk@winthrop.edu

[Deputy] Title IX Coordinator -

A Deputy Title IX Coordinator is a staff member assigned by the Title IX Coordinator to coordinate the resolution of a given report. The Title IX Coordinator may assign Deputy Coordinator’s on a permanent or case by case basis as deemed appropriate.

For cases involving faculty or staff, Winthrop University’s Deputy Title IX Coordinator is:
Deputy Title IX Coordinator (WU faculty or staff involved)

Lisa Cowart
303 Tillman Hall
803-323-4503



cowartl@winthrop.edu

Or the US Department of Education, Office for Civil Rights 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
Telephone: (800) 421-3481
FAX: 202-453-6012;
TDD: 877-521-2172
Email: OCR@ed.gov

4. Procedures:

This section was intentionally left blank.

5. Resources:

Student Sexual Misconduct Policy:

<https://www.winthrop.edu/uploadedFiles/studentconduct/StudentSexualMisconductPolicy.pdf>

6. History of Revisions:

01/01/2016	Minor Revisions
06/01/2012	Policy first established

7. Approvals:

Responsible Officer Signature/Date:

Vice President/Senior Administrator Signature/Date:

President Signature/Date: