



The Appeal Panel is the body that receives and adjudicates appeals of decisions of the Harassment and Sexual Misconduct Board or an Investigation Review Panel. W&L, in its sole discretion, may use an external consultant/vendor to handle an appeal or any other part or parts of its process. For Title IX complaints and non-Title IX complaints against students, the Appeal Panel is made up of three (3) members of the HSMB selected by the Chair of the Appeal Panel who did not serve on the original panel. For non-Title IX complaints against employees or other nonstudents, an Appeal Panel is made up of three (3) IROs who were not involved in the original investigation or panel and who are appointed by a Co-Chair who was not involved in the original review or sanctioning process, or an external consultant/vendor. Each member of the Appeal Panel or external consultant/vendor must be impartial and free of any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The Chair of the Appeal Panel or Co-Chair (as applicable) has discretion to address any conflicts that may arise with members constituting the panel. Appeal Panel members who have reason to believe they cannot be impartial, free of any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, or make an objective determination must recuse themselves from the process.

D. Chair of the Appeal Panel

For Title IX complaints and non-Title IX complaints against students, the Chair of the Appeal Panel will be a Chair of the HSMB who was not involved in the original hearing. The Chair of the Appeal Panel will determine the proper composition of the panel, oversee and organize the appeal process, and enforce the rules of professional conduct as outlined in Section XVIII.A, but does not have a vote in the appeal process. The Chair of the Appeal Panel must be impartial and free of any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The Chair of the Appeal Panel shall exercise reasonable discretion in dealing with all matters not expressly covered under this policy relating to the appeal process and shall have the authority to make the final determination as to all procedural questions or issues that may arise relating to the appeal process.

E. Chair of the HSMB

For complaints of Title IX sexual harassment and complaints of non-Title IX sexual misconduct against students, the Chair of the HSMB is an individual designated to serve as Chair of the HSMB hearing panel. The Chair of the HSMB appoints the HSMB panel members, communicates with the parties at various stages in a resolution process, makes evidentiary rulings and other decisions as set forth in this policy, organizes and runs the hearing process, and enforces the rules of professional conduct as outlined in Section XVIII.A, but does not vote on responsibility or sanction. The Chair of the HSMB shall exercise reasonable discretion in dealing with all matters not expressly covered under this policy and shall have the authority to make the final determination as to all procedural questions or issues that may arise.

F. Co-Chairs

For complaints of non-Title IX sexual misconduct against employees or other nonstudents, the Co-Chair of the Investigation and Review Officers ("IROs") will be the Treasurer or the President for Finance and Administration. M es M identiary ruling^a M

Hearing Advisors are law and undergraduate students who have been trained by the University to provide support and advice to complainants and respondents. Hearing Advisors must follow the rules applicable to Advisors set forth in Section III.A above.

O. Incapacitation

An individual who is incapacitated cannot consent to sexual activity. Incapacitation is defined as the inability, temporarily or permanently, to give consent because an individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring.

In other words, a person may be considered unable to consent due to incapacitation if the person is not able to understand the who, what, where, when, why, and/or how of a sexual interaction.

In evaluating whether consent was present in cases of alleged incapacitation, the University asks three questions: (1) Was complainant incapacitated?, (2) If so, did the respondent know that the complainant was incapacitated?, and (3) If not, would a sober, reasonable person in the same situation have known that the complainant was incapacitated based on objectively and reasonably apparent indications of incapacitation.

Where alcohol or other drugs are involved, incapacitation is a state beyond drunkenness or intoxication. The impact of alcohol and other drugs varies from person to person; however, common warning signs that a person may be incapacitated or approaching incapacitation as a result of alcohol or drug use or consumption may include, but are not limited to, slurred speech, stumbling, unsteady gait, odor of alcohol, incontinence, combativeness, or emotional volatility.

An individual who engages in sexual activity with someone the individual knows or reasonably should know is incapable of giving consent is in violation of this policy.

P. Investigation and Review Officers

Investigation and Review Officers (IROs) are a group of individuals who are specially trained to investigate and review complaints of non-Title IX sexual misconduct against employees and other non-students. When a formal complaint of non-Title IX sexual misconduct is filed against a member of the faculty, staff, or other non-student under this policy, the relevant Co-Chair selects the investigator(s), an Investigation and Review Panel ("IRP"), and (if needed) an Appeal Panel from the pool of the available IROs.

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- Responsible for the implementation of supportive measures upon a report of misconduct and any remedies imposed as a result.

The Title IX Coordinator is supported in these responsibilities by Jodi Williams, the Executive Director of Human Resources, who serves as the Assistant Title IX Coordinator.

In compliance with Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and all other applicable non-discrimination laws, Washington and Lee University does not discriminate on the basis of race, color, religion, national or ethnic origin, sex, gender identity, gender expression, sexual orientation, age, disability, veteran's status, or genetic information in its educational programs and activities, admissions, and with regard to employment. Inquiries may be directed to Lauren E. Kozak, Title IX Coordinator, Elrod Commons 237, (540) 458-4055, kozakl@wlu.edu, who is designated by the University to coordinate compliance efforts and carry out its responsibilities under Title IX, as well as those under Section 504 and other applicable non-discrimination laws.

All University proceedings are to be conducted in compliance with the requirements of Title IX, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act); the Family Educational Rights and Privacy Act (FERPA); and all other applicable federal and state laws and regulations.

In addition to contacting the resources specified in this policy, any person with concerns regarding the University's response to their^{*} complaint may contact the following:

Washington DC (Metro)
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1475
Telephone: 202-453-6020
FAX: 202-453-6021; TDD: 800-877-8339
Email: OCR.DC@ed.gov

W&L prohibits and will not tolerate sexual misconduct or retaliation in any form. Violations of this policy are subject to any combination of sanctions, up to and including suspension, dismissal, and/or termination of employment. Sexual misconduct affects individuals of all genders, gender identities, gender expressions, and sexual orientation, and does not discriminate by racial, social, or economic background.

Title IX of the Education Amendments of 1972 (Title IX) covers conduct that meets a federally prescribed definition of sexual harassment, which this policy refers to as Title IX sexual harassment (see Section V.A below for definition). If alleged prohibited conduct does not fall under the definition or jurisdiction of Title IX sexual harassment, this policy will still apply to such prohibited conduct as non-Title IX sexual misconduct in the following circumstances:

- The conduct occurs on the campus of or other property owned or controlled by the University;
- The conduct occurs during or in connection with a University education program or activity, including in the course of University-related business, travel or off-campus programs. This may include, but is not limited to, domestic or international academic programs, field trips, spring term coursework, study-abroad programs, internship programs, work-related conferences, etc.;
- The conduct has a continuing adverse effect for a complainant while on campus or other property owned or controlled by the University or in any University employment or education program or activity; and/or
- The conduct is committed by a student and occurs in the City of Lexington, the City of Buena Vista, or the County of Rockbridge.

For ease of reference, prohibited conduct that is not covered by Title IX will be referred to as non-Title IX sexual misconduct throughout this policy (see Section V.B below for definition). The University will review all reports of alleged misconduct, regardless of where the conduct occurred, to determine whether jurisdiction exists.

A. Title IX Sexual Harassment

Title IX sexual harassment means conduct on the basis of sex that occurs in a University education program or activity, against a person in the United States, and satisfies one or more of the following:

- A University employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;

- Unwelcome conduct determined b

identity, or gender expression, when one or more of the following conditions are present:

- Submission to the unwelcome conduct is an expressed or implied condition of an individual's employment, evaluation of academic work, or any aspect of a University program or activity;
- Refusal to submit to unwelcome conduct resulted in a tangible academic or employment detriment; and/or
- The unwelcome conduct is so severe, persistent, or pervasive that it unreasonably interferes with an individual's work or academic performance, or creates an intimidating or hostile academic or work environment under both an objective (a reasonable person's view) and subjective (the complainant's view) standard.

Conduct is unwelcome if the individual did not request or invite it and regarded the conduct as undesirable or offensive. Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.

A single, isolated incident of unwelcome conduct alone may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical. The determination of whether an environment is hostile must be based on all the circumstances.

These circumstances could include, but are not limited to:

- The degree to which the conduct affected one or more person's education or employment;
- The type, frequency, and duration of the conduct;
- The nature and severity of the conduct;
- The relationship between the respondent and the complainant;
- Whether the conduct was physically threatening;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct; and/or
- Whether the conduct deserves the protections of academic freedom.

I. Sexual Exploitation

Sexual exploitation means taking advantage of the sexuality of another person without consent. Examples of sexual exploitation include, but are not limited to, the following:

- Observing another individual's nudity or sexual activity or allowing another to observe nudity or sexual activity without the consent of all parties involved in a place where the individual being observed would have a reasonable expectation of privacy;
- Recording, streaming, or photographing private sexual activity and/or a person's nudity, or distribution of such without the consent of all parties involved;
- Prostituting another individual;
- Disrobing or exposing another without their consent; and/or
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

J. Domestic and Dating Violence

Domestic violence means violence committed by:

- A current or former spouse or intimate partner of the complainant;
- A person with whom the complainant shares a child in common;
- A person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner; or
- Any other person against a complainant who is protected from that person's acts under the domestic or family violence laws of Virginia (18.2-572, 18.2-61 et seq.), which includes parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents, grandchildren, and in-laws.

Dating violence means violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the complainant; and
- Where the existence of such a relationship shall be determined based on (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

Domestic and/or dating violence includes sexual or phyt ; o M M M M

These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others, the conduct involves suspected abuse of a minor under the age of 18, or as otherwise authorized by state and federal law.

Community members wishing to seek confidential assistance may speak with counselors in the Counseling Center (for students), health service providers in the Student Health Center (for students), local health providers, off-campus rape crisis resources, counseling resources available to employees through the Employee Assistance Program, or members of the clergy, all of whom will maintain confidentiality.

It is important to understand that any University employee who is not designated as a confidential resource cannot guarantee the confidentiality of a report or information concerning an alleged violation of this policy. All employees are encouraged to share any report of sexual misconduct with a Title IX Coordinator, and some employees are considered Authorized Employees or Mandatory

University employees who have a legitimate need to know in order to assist in the active review, investigation, or resolution of the report pursuant to the F

Project Horizon can provide information to complainants about criminal reporting, investigations, as well as civil and criminal court proceedings involving sexual assault, stalking, or dating/domestic violence. Project Horizon advocates may accompany complainants to court dates and appointments with law enforcement officers, the Commonwealth's Attorney, Court Services Unit, and other legal proceedings and answer questions about these processes. To speak with Project Horizon's legal advocate, call (540) 463-8761.

The University's policy, definitions, and burden of proof may differ from Virginia criminal law. A complainant may seek resolution through the University's resolution processes, may pursue criminal action, may choose one but not the other, or may choose both. Neither law enforcement's determination whether or not to prosecute a respondent nor the outcome of any criminal prosecution determines whether sexual misconduct has occurred under this policy. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus.

Pursuant to and as required by Virginia law, the University must disclose information regarding a report of sexual misconduct to law enforcement if (1) it is a report of sexual violence, which means physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent; (2) the sexual violence is alleged to have been committed against a student attending the University, or may have occurred on certain locations as defined by Virginia law; and (3) disclosure of the information is deemed necessary to protect the health or safety of the student or other individuals by the three-person University Review Committee (the Review Committee is composed of the Title IX Coordinator, a representative from Student Affairs, and a representative from Public Safety). If the alleged act of sexual violence is a felony crime of sexual violence under Virginia law, disclosure must, under applicable law, also be made to the Commonwealth's Attorney without the release of any personally identifiable information (unless such information was deemed necessary by the Review Committee to be disclosed to law enforcement in accordance with the applicable law). See [Section 18.2-67.1](#).

After receipt of a report of sexual misconduct, the University will act consistent with a complainant's request where possible.

If the complainant files a formal complaint, the University will always proceed pursuant to the relevant resolution process. If a complainant files a formal complaint and requests informal resolution instead of an investigation and/or hearing process, the University will determine whether informal resolution is appropriate.

Where a complainant makes a report but declines to file a formal complaint, the Title IX Coordinator or Assistant Title IX Coordinator will determine, based on the available information, whether to file a formal complaint. This decision will be based on an evaluation as to whether failing to file a formal complaint over the complainant's objections would be clearly unreasonable in light of the known circumstances.

In determining whether the Title IX Coordinator or Assistant Title IX Coordinator will file a formal complaint, the Title IX Coordinator or Assistant Title IX Coordinator will consider a range of factors, including, but not limited to:

- The severity and impact of the conduct, including whether a weapon was used;
- Whether the complainant is a minor under the age of 18;
- Whether other reports of sexual misconduct have been made against the respondent;
- Whether the respondent threatened further violence or other violence against the complainant or others;
- Whether the respondent is an employee;
- Whether the university possesses other means to obtain relevant evidence of the alleged sexual misconduct (security cameras, video recordings, photographs or other evidence); and

and free of any conflict of interest. A party may raise an objection to the appointment of any investigator on the basis that such investigator is not impartially independent.

Either party can appeal on the following bases: (1) procedural irregularity that affected the outcome of the matter; (2) new evidence that was not reasonably available at the time the determination was made that could affect the outcome of the matter (the time frame for filing an appeal based on newly discovered information may be extended at the discretion of the Title IX Coordinator where the evidence could not reasonably have been discovered within the time frame and a compelling justification exists for its consideration); (3) the Title IX Coordinator, decision-maker(s), or investigator(s) 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; (4) the sanction lacked reasonable basis; and/or (5) extraordinary circumstances that affected the outcome of the matter.

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XVIII. Miscellaneous Provisions

A. Professional Conduct Rules

The following rules of decorum and professionalism apply to all hearings and meetings during any resolution process governed by this policy. These rules apply equally to all parties, witnesses, and advisors.

- Any person present at any meeting or hearing must treat others at the meeting or hearing with courtesy and respect. This rule does not prohibit good faith expressions of dissent or criticism;
- During any cross-examination permitted under the Title IX resolution process, questions only are permitted; an Advisor of Choice may not give any statements, speeches, or objections to relevance decisions;
- Any cross-examination questions or techniques must not be for the purpose to harass or intimidate others;
- Disruptive behavior that hinders the orderly conduct of the meeting or hearing is prohibited;
- Interruptions, sarcasm, cursing, yelling, and insults are prohibited.

The investigator(s), Co-Chair, Chair of the HSMB or Appeal Panel, or any individual charged with facilitating any part of the informal resolution process has the authority to enforce these rules and to take steps necessary to ensure they are being followed.

Any person who does not follow these rules of decorum will be warned once. If the person continues to disregard the rules, such person may be asked to leave the meeting, interview, or hearing at the discretion of the person with authority to enforce the rules.

B. Specific Evidence Rules

In general, questions and evidence about the sexual predisposition or prior sexual behavior of the complainant are not relevant and will not be admitted as evidence during an investigation and/or hearing, ex

determination(s) made and/or sanction(s) issued under this policy to any individual or group shall preclude or prohibit any other administrative action from being taken, disciplinary or otherwise, or any other conduct body from making a determination and/or imposing sanctions consistent with its own policies, procedures, or practices.

D. Transcript Notations

Pursuant to and as required by Virginia law, for each student who has been suspended for, permanently dismissed for, or withdraws from the University while under investigation for an offense involving sexual violence (defined as physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent), the University will make or cause to be made a prominent notation on the academic transcript of each student. In cases of suspension and dismissal this transcript notation will read: "[Suspended or Dismissed] for a violation of W&L's set of standards." In cases of withdrawal, the notation will read: "Withdrew while under investigation for a violation of W&L's set of standards. This withdrawal as noted does not constitute a finding or admission of responsibility on the part of the student."

The University shall remove from a student's academic transcript any notation placed on such transcript due to a student's suspension if the student (1) completed the term of the suspension and (2) the student is eligible to apply for reinstatement.

The University shall remove from a student's academic transcript any notation placed on such transcript due to a student's dismissal

* Throughout this policy, if necessary, "they", "them" and "their" are used intenti