

Wright State University
Policy No. 1270: Sex/Gender-Based Harassment, Discrimination, and Sexual Misconduct
Appendix B: Resolution Process & Timelines

The Title IX Coordinator may delegate all responsibilities under this Policy to another appropriately qualified member of the Title IX team.

Disability or medical accommodations may be available. Individuals who wish to request accommodations should consult the University's Office of Disability Services, at disability_services@wright.edu, (937) 775-5680, and/or 180 University Hall, 3640 Colonel Glenn Highway, Dayton, Ohio 45435.

A. Reporting

The Title IX process begins when a report is filed. Individuals who believe they may have witnessed or been subjected to Title IX Sexual Harassment, or who have knowledge about an incident of Title IX Sexual Harassment, are encouraged to make a report with the Title IX Coordinator. (See Appendix A for information about reporting options.) Upon receipt of a report, the Title IX Coordinator will work to provide supportive measures, access to resources, information about formal and informal resolution procedures, and information about filing a report with the appropriate law enforcement agency. However, the University will not initiate a formal investigation unless a formal complaint is signed by a complainant or the Title IX Coordinator.

Upon receipt of a report, the Complainant will be offered the opportunity for an initial discussion with the Title IX Coordinator or their designee to give the Complainant the opportunity to recount what has taken place and discuss optional next steps. The Complainant will be permitted to have an advisor of their choice present during this discussion. The Title IX Coordinator will review with the Complainant the University's procedures for filing a formal complaint, informal and formal resolution, the rights of the Complainant, the availability of supportive measures, information relating to law enforcement reporting if appropriate, and available medical and/or counseling resources as appropriate. Options for, and available assistance in, changing academic and living situations can be discussed and provided if requested and if such changes are reasonably available. The Complainant has discretion to file a formal complaint, seek supportive measures, pursue informal resolution and/or formal resolution (including the grievance process outlined in Section III.G. of this Policy), or to take no further action. However, information disclosed to the Title IX Coordinator during this initial meeting is not necessarily confidential, and the Title IX Coordinator may have a duty to report information about the incident to law enforcement.

Upon receiving a report, the Title IX Coordinator will conduct an initial assessment to evaluate whether the complaint alleges sufficient information to meet the scope and definition requirements listed Section 1270.2 and 1270.4 of this Policy.

“Supportive Measures” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant and/or the

respondent before or after the filing of a formal complaint, or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education programs and activities without unreasonably burdening the other party. Those measures may include steps to protect the safety of the parties or others within the University community, the safety of the University's educational environment, and/or deter sexual harassment. Supportive measures are discussed in greater detail in Appendix C of this Policy.

After receipt of a report, WSU may remove the Respondent on an emergency basis if an individualized safety and risk assessment determinates that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal of a Respondent. This assessment will be made by the Title IX Coordinator and/or their designee, in consultation with appropriate WSU administrators. Threats must pose more than a generalized, hypothetical, or speculative risk to health and safety for emergency removal to be appropriate. A removed Respondent will receive notice and an opportunity to challenge the decision immediately following the removal. Emergency removal may include interim restricted access and interim suspension, depending on the circumstances presented.

Subject to applicable human resource policies and collective bargaining agreements, non-student employees may be placed on administrative leave during the grievance process.

B. Formal Complaint

After the initial discussion with the Complainant described above, the Complainant will be asked whether they would like to file a Formal Complaint. "Formal Complaint" is defined as a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that WSU investigate the allegation of sexual harassment. 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 WSU. As noted in this Policy, a Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. Additionally, a "document filed by a complainant" can be in the form of an electronic submission (such as by electronic mail or through an online portal provided for this purpose by WSU) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint.

If the Title IX Coordinator initiates or signs a Formal Complaint, the Title IX Coordinator will not be considered a "Complainant" as that term is defined in this Policy.

C. Informal Resolution

Parties may choose to resolve a Formal Complaint through the Informal Resolution process. WSU's Informal Resolution process involves informal consultation with the parties to find an acceptable resolution for both parties without invoking the full investigation and adjudication process described below. The informal process may include counseling the Complainant on ways to address the Respondent directly regarding their behavior if the Complainant is comfortable doing so, counseling of the Respondent by the Title IX Coordinator on changing their behavior, a facilitated discussion between the Complainant and Respondent, a mediated agreement between

the Complainant and Respondent, or any other informal process that is appropriate under the circumstances.

The informal resolution process is voluntary. WSU will not require that a complainant and/or respondent participate in informational resolution and waive the right to a full investigation and adjudication of formal complaints of Title IX Sexual Harassment in order to enroll or continue enrollment, or be employed or continue employment, or enjoy any other right granted by WSU. The parties may choose to pursue a formal resolution and end the informal resolution process at any time prior to reaching a determination of responsibility.

WSU is responsible for taking the following steps prior to facilitating an informal resolution:

1. Providing written notice to the parties of:
 - (a.) the allegations,
 - (b.) the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and
 - (c.) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
2. Obtaining the parties' voluntary, written consent to the informal resolution process.

WSU will never offer or facilitate an informal resolution process to resolve allegations that an employee engaged in Title IX Sexual Harassment of a student.

The Complainant and Respondent are permitted to bring an advisor of their choosing to any discussions as part of the informal resolution process. An advisor may offer their assistance to the Complainant or Respondent but may not speak for them during the process.

D. Investigation Process for Formal Complaints

A party may choose to resolve a Formal Complaint through the investigation process, provided that the Title IX Coordinator has conducted an initial assessment and determined that the scope requirements have been met, that Title IX Sexual Harassment may have occurred, and that an investigation is appropriate.

WSU may also choose to move forward with a Formal Complaint signed by the Title IX Coordinator, as described above.

No party will be compelled to participate in an investigation or hearing to resolve a formal complaint. However, a party's non-participation does not prevent the formal process from moving forward.

The investigation process will begin with the Title IX Coordinator appointing one or more investigators. An investigator will begin the full investigation promptly and will conduct the full investigation in a manner that is complete, thorough, and impartial.

1. Notice

WSU will provide to all known parties written notice of:

- WSU's grievance process
- The allegations of sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview ("sufficient details" include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Title IX Sexual Harassment as defined by this Policy, and the date and location of the alleged incident, if known);
- The presumption that the Respondent is not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- The parties' right to have an advisor of their choice, who may be an attorney;
- The parties' right to inspect and review evidence; and
- Applicable provisions of University policy, collective bargaining agreements, codes of conduct, and other authorities that prohibit knowingly making false statements or submitting false information during the formal resolution process.

If, during the course of the investigation, additional allegations of Title IX Sexual Harassment are reported or otherwise discovered, the parties will receive notice of these additional allegations that were not included in the original notice. The obligation to notify the parties of the Title IX Sexual Harassment allegations being investigated is an ongoing one.

2. Grounds for Dismissal of Formal Complaint

If, after the initial review of the Formal Complaint by the Title IX Coordinator, it is determined that any of the following conditions exist, WSU will dismiss the Formal Complaint from the Grievance Procedures outlined in this Policy:

- The alleged conduct, if it occurred as alleged, would not constitute Title IX Sexual Harassment;

- The alleged conduct, if it occurred as alleged, did not occur in WSU's educational programs or activities, or;
- The alleged conduct, if it occurred as alleged, did not occur against a person in the United States.

Although prior determinations on each of these issues may have been made earlier in the process, additional information may be uncovered during an investigation that requires them to be reconsidered. The Title IX Coordinator is responsible for reconsidering these issues at any point during the processes outlined in the Policy, which may result in the report of misconduct being referred to another office on campus or dismissed from the Grievance Procedures outlined in this Policy.

WSU may also dismiss a formal complaint or allegations therein if:

- 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 at or employed by WSU, or;
- Specific circumstances prevent WSU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Such a dismissal does not preclude WSU from proceeding under another University conduct process.

WSU will send written notice of the dismissal and the reasons for dismissal simultaneously to all parties. If a Formal Complaint is dismissed for one of the above reasons, each party may appeal the dismissal using the process described in point 6 "Appeals".

3. Investigative Interviews and Gathering of Evidence

During the investigation, both the Complainant and Respondent may present statements, witnesses, and other evidence to the investigator. The Reporting Person (who may or may not be the Complainant), the Complainant (if not the Reporting Person), the Respondent, and witnesses with relevant information may be interviewed as part of the full investigation. The interviews will be supplemented by the investigator gathering of any physical, documentary, or other evidence, as appropriate and available. Follow-up interviews may be conducted by the investigator as needed. The full investigation is designed to provide a fair and reliable gathering of the facts.

WSU will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

The University will not restrict the ability of either party to discuss the allegations under investigation or gather/present relevant evidence. A party's right to meaningfully participate in the process includes the right to communicate about the case with any witness or potential witness, and such communications will not be deemed an interference with an investigation. However, a party is not permitted to harass witnesses or prospective witnesses who have indicated their wish not to speak with the party. Furthermore, a party is not permitted to engage in conduct that might

constitute tampering with the outcome of an investigation or hearing, which conduct may amount to prohibited retaliation.

WSU 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 WSU obtains that party's voluntary, written consent.

The parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which WSU does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a party or other source. WSU will not consider or provide for inspection and review evidence which WSU knows was illegally or unlawfully created or obtained. WSU may impose restrictions on the parties and their advisors, or require a non-disclosure agreement, to prevent dissemination of the evidence subject to inspection and review.

Prior to completion of the investigative report, WSU will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

All evidence subject to the parties' inspection and review will be available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

4. Timeframe

WSU will attempt to complete most investigations within 60 days. The timeframe for investigations will begin upon filing of a Formal Complaint and will conclude upon dissemination of the evidence to the parties. Investigations may be delayed, and timeframes for investigations may be extended, for good cause and upon written notice provided to Complainants and Respondents including the reason for the delay or extension. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement or civil rights enforcement activity; or the need for language assistance or accommodation of disabilities.

5. Investigative Report

The investigator will prepare an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. If a party disagrees with an investigator's

determination about relevance, the party may argue relevance in their written response and/or to the decision-maker at the hearing.

If the report involves multiple complainants, multiple respondents, or both, WSU may issue a single investigative report.

6. Equitable Treatment

Complainants and respondents are eligible for Supportive Measures as defined within this Policy. WSU will not impose disciplinary sanctions against a respondent unless a determination of responsibility for sexual harassment has been made against the respondent.

WSU will conduct an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence. WSU will not require, allow, rely upon, evaluate, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected by a legally recognized privilege (e.g., attorney-client), unless the person holding such privilege has waived the privilege.

7. Bias and Conflicts of Interest

Any individual designated by WSU as a Title IX Coordinator, investigator, decision-maker, or informal resolution process facilitator, must not have a conflict of interest or bias for or against complainants or respondents generally, or for or against an individual complainant or respondent. The following will not be considered evidence of bias:

- The Title IX Coordinator’s initiation of a formal complaint, or;
- An individual’s decision that allegations warrant an investigation.

WSU will apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased, and will exercise caution not to apply generalizations that might unreasonably conclude that bias exists. An individual’s current job title, professional qualifications, past experience, identity, or sex will not, alone, indicate bias.

Use of trauma-informed practices will not be considered evidence of bias when such practices do not:

- Rely on sex stereotypes;
- Apply generalizations to allegations in specific cases;
- Cause loss of impartiality, and;
- Prejudge of the facts at issue.

8. Presumption of Non-Responsibility

There is a presumption that a respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

9. Standard of Evidence

The standard of evidence for review of Formal Complaints under this Policy is preponderance of the evidence. “Preponderance of the evidence” is a determination based on facts that are more likely true than not. In the preponderance of the evidence standard, where the evidence in a case is “equal” or “level,” the preponderance of the evidence standard results in a finding that the respondent is not responsible.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on WSU and not on the parties.

10. Consolidation of Formal Complaints

WSU may consolidate Formal Complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment rise out of the same facts or circumstances. The same facts and circumstances means that the multiple complainants’ allegations are so intertwined with their allegations directly related to all parties.

11. Advisors during the Investigation

Each party will have the right to bring an advisor of their choosing to any meetings or discussions relating to the investigation of a Formal Complaint. The advisor may advise the party directly and ask clarifying questions, but may not speak for the party or disrupt the investigation. If a party’s advisor refuses to comply with restrictions set by WSU, WSU may require that the party use a different Advisor. This provision applies to all parts of the grievance proceeding except for the live hearing described in the Title IX Hearing Procedures (maintained and administered by the appropriate adjudicating offices). For information about the role of Advisors during the live hearing, see the Title IX Hearing Procedures.

E. Title IX Hearing Process

The University will seek to complete adjudication within 15 business days of the Final Investigation Report being submitted to the appropriate adjudicating office. However, context and complexity may cause the process to extend beyond that period of time.

The Final Investigation Report will be forwarded to the adjudicating office once it has been shared with the parties and their advisors. For students, this is the Office of Community Standards and Student Conduct. For faculty and staff, this is either Human Resources or the Provost’s Office. No matter the adjudicating office, both parties will receive notice that the report has been submitted to the appropriate adjudicating office, and will be invited to meet with a staff member to review the hearing process.

For additional information about the Title IX Hearing Process, see the appropriate Title IX Hearing Procedures (e.g., the Title IX Hearing Procedures included in the Code of Student Conduct, the Title IX Hearing Procedures for Employees Covered by a Collective Bargaining Agreement, etc.)

The following **Sanctions** are available upon a finding that the respondent engaged in misconduct prohibited by this Policy:

1. Student Sanctions

Sanctions range depending on the violation, the student's disciplinary history, and considering precedence in previous cases. The range of sanctions are as follows:

- Warning
- Educational Sanction
- Alcohol Violation Sanctioning
- Drug Violation Sanctioning
- Restitution
- Fine/Administrative Fee
- Probation
- Loss of Privilege
- Termination of Recognition
- Suspension
- Summary Suspension
- Residential Summary Suspension
- Deterred Suspension
- Expulsion

Note that No Contact orders are part of the investigatory process. No Contact orders are not considered a 'sanction' but are in place as a safety measure for both parties.

2. Non-Bargaining Unit Faculty and Staff

The University utilizes a number of sanctions for progressive, corrective, disciplinary purposes for staff based on egregiousness of the situation the circumstances involved. The following are examples of sanctions the university may implement:

- Mandatory training required
- Mandatory referral to Employee Assistance Program (EAP)
- Performance Improvement Plan (PIP)
- Verbal counseling
- Written warning
- Suspension (of various lengths)
- Demotion of position and pay
- Last chance agreement
- Termination

3. Bargaining Unit Faculty/Staff

Employees covered by a collective bargaining agreement should refer to their respective contract for relevant information.

F. Appeals

Parties may appeal to the Title IX Coordinator the decision-maker's decision regarding responsibility. The Title IX Coordinator will initiate the appeal process. WSU will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. Both parties will have a reasonable, equal opportunity to submit a written response in support of, or challenging, the outcome.

The Appeal Officer, who is the decision-maker for the appeal, will issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties.

A Complainant or Respondent must submit a written appeal to the Title IX Coordinator within 10 business days of receipt of the written Title IX decision or the Notice of Dismissal. The written appeal must include the specific basis for the appeal and any information or argument in support of the appeal. Upon receipt of the appeal, the Title IX Coordinator will provide the other party notice of the appeal and the opportunity to respond in writing to the appeal. Any response to the appeal must be submitted to the Title IX Coordinator within 10 business days from the other party's receipt of the appeal. Appeal responses are shared with the other parties but not reply is permitted.

Grounds for appeal include:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter, and;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainant or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

All grounds for appeal are available to all parties.

A trained Appeal Officer will be appointed by the Title IX Coordinator.

The Appeal Officer will decide regarding the written appeal and, within 10 business days of the receipt of all the appeal documents, notify the parties of the outcome. The Appeal Officer may affirm the decision, alter the decision, alter the sanctions, or request that additional steps be taken.

Appeal deadlines may be extended for good cause by the Title IX Coordinator. Any extension will be communicated to the parties. All appeal decisions are final.