

**Wright State University**  
**Policy No. 1270: Sex/Gender-Based Harassment, Discrimination, and Sexual Misconduct**  
**Appendix D: Terms and Definitions**

As used in this policy and all appendices:

**Actual Knowledge:** Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official who has authority to institute corrective measures on behalf of the university.<sup>1</sup> The following officials at Wright State University are considered to be officials who have authority to institute corrective measures on behalf of the University: The President, Provost, the Dean of Students, the Director of Student Conduct, Athletic Director, Title IX Coordinator, and the Chief of Campus Security. Any and all reports made to these officials will trigger a reasonably prompt response from the Title IX Coordinator that is reasonable in light of the known circumstances.

**Advisor:** Complainants and respondents have the right to have an advisor of their choosing during the process of investigation and adjudication. Federal regulations stipulate that in the event the person is not able to find an advisor the University will provide one. An advisor can be any person, including an attorney. Throughout the process it is expected that the advisor is not to speak for the student but rather provide guidance and advising. Advisors will also conduct questioning (cross-examination) in a hearing, as it is mandated that advisors engage in any cross examination that is to take place, and never the parties themselves.

**Appeal Officer:** Appeal Officers are trained staff volunteers who serve as the decision-maker for appeals of Title IX decisions. Appeal Officers review the investigative report, relevant evidence, decision, and hearing recording or transcript for all appeals submitted that raise one or more of the recognized grounds for Appeal listed in Appendix B.

**Coercion:** An unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Consent:** This is the act of knowingly agreeing to engage in a sexual activity. Consent must be voluntary. An individual cannot consent who has been compelled by force, threat of force, coercion or deception; or who is unaware that the act is being committed; or who is incapacitated (see Incapacitation definition below); or who is a minor by legal definition. Prior sexual activity or relationship does not, in and of itself, constitute consent. Consent is clear, and knowing, and voluntary, words or actions, that give permission for specific consensual activity. Consent is

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<sup>1</sup> Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute "Actual Knowledge." This standard is not met when the official of the University with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the University.

active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the considerations of) sexual activity. Consent can be withdrawn once given. The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party as it relates to the ability to give consent. There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent.

**Deputy Coordinator:** The role of a Deputy Title IX Coordinator is to provide intake services, support services, and serve as a connection between the area in which you work and the Office of Title IX. Title IX Deputies are cross trained on investigating, decision making, appeals and serving as an advisor. Those serving as deputy have the authority to take on any of these roles in the event they are called upon to do so by the Title IX Coordinator or Director of Compliance. Title IX deputies will remove themselves in any case where a conflict of interest or bias exists.

**Decision-Maker:** The Title IX Coordinator will appoint one or more trained members of the University community to serve as decision-makers for Title IX hearings. Decision-makers may serve in this capacity as either single hearing officers or as part of a hearing panel, and will be responsible for conducting the Title IX Hearing in accordance with the Title IX Hearing Procedures, and evaluating all admissible, relevant evidence for weight or credibility, before issuing a written determination of responsibility in accordance with Appendix B of this Policy.

**Discrimination:** Defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender. Reports of sex or gender-based discrimination are addressed in the University's policy on Harassment and Discrimination on the Basis of Protected Class, and/or the University's policy on retaliation.

**Education Program or Activity:** Locations, events, or circumstances, including employment, where the university exercises substantial control over both the respondent and the context in which sexual harassment occurs and includes any building owned or controlled by a student organization that is officially recognized by the University.

**Emergency Removal:** If, after receipt of a report and an individualized safety and risk assessment, the University determines that an immediate threat to the physical health or safety of any student or other individuals arising from the allegations of sexual harassment justifies removal of a Respondent, the University may remove the Respondent on an emergency basis. A removed Respondent will receive notice and an opportunity to challenge the decision immediately following the removal. Threats must pose more than a generalized, hypothetical, or speculative risk to health and safety for emergency removal to be appropriate.

**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 overcomes free will or resistance or that produces consent. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

**Formal Complaint:** A document filed by the complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that WSU investigate the

allegation. Formal Complaints must be filed in order to pursue either an informal resolution process or a formal grievance process.

**Formal Resolution:** The formal investigatory and adjudication process outlined in Appendix B of this Policy.

**Incapacitation:** A state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). A demonstration of a person’s incapacity includes but is not limited to; sleeping, passed out, unconscious, involuntarily restrained, making irrational decisions, unable to speak or communicate clearly, unable to determine time or place, and/or under the influence of drugs commonly known as ‘date rape’ drugs. Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or “blackout.” The presence of force is not demonstrated by the absence of resistance. “Blackout” commonly refers to a period where memory formation is blocked. A period of consistent memory loss is termed a blackout, whereas periods where memory is both lost and formed intermittently can be referred to as a “brownout.” Neither state of blackout nor brownout automatically indicates incapacitation, but factual context can establish that a blackout or a brownout is occurring in an individual who is incapacitated (where incapacity is defined as an inability to make rational, reasonable decisions or judgments).

**Investigator:** Investigators are charged with gathering evidence and creating an investigatory report that presents the evidence for consideration by a decision-maker. Specifically, the investigator will seek to interview the primary parties as well as witnesses, gather any available evidence such as photos or documents, and construct a summary report that allows for objective review of the information.

**Preponderance of Evidence Standard:** “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.

**Reporting Party:** The person or persons who initiate the original report. This person can be, but may not be, the complainant (person impacted) in the report.

**Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Responsible Employees:** All university employees who are considered “Responsible Employees” are obligated to report. Responsible employees are not confidential resources. A responsible employee is a university employee who has the authority to address sexual misconduct, who has the duty to report incidents of sexual misconduct, or who is a member of the university community could reasonably believe has such authority or duty. A non-exhaustive list of responsible employees is contained in Appendix D that follows this policy. Generally, with the exception of the confidential resources discussed above, most employees to whom community members might reasonably report an incident of misconduct will be responsible employees. The University has identified and designated responsible employees to immediately report to the Title IX Coordinator any conduct that comes to the attention of the responsible employee that involves incidents of

discrimination, harassment, sexual violence, interpersonal violence and stalking. This responsibility is critical because the University is obligated to address conduct about which a responsible employee knew. Employees with administrative or supervisory responsibilities on campus or who have been designated as Campus Security Authorities, are considered Responsible Employees.

**Retaliation:** No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

**Supportive Measures:** Non-disciplinary, non-punitive individualized services offered to all parties, as appropriate, as reasonably available, and without fee or charge. Supportive measures are available to both parties in the event of an informal report, even if no Formal Complaint is filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment. The University will maintain as confidential any supportive measures provided to the parties, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures.