



Sex Discrimination and Sexual Harassment Training for Investigators & Appeal Board

2021-2022 Academic Year

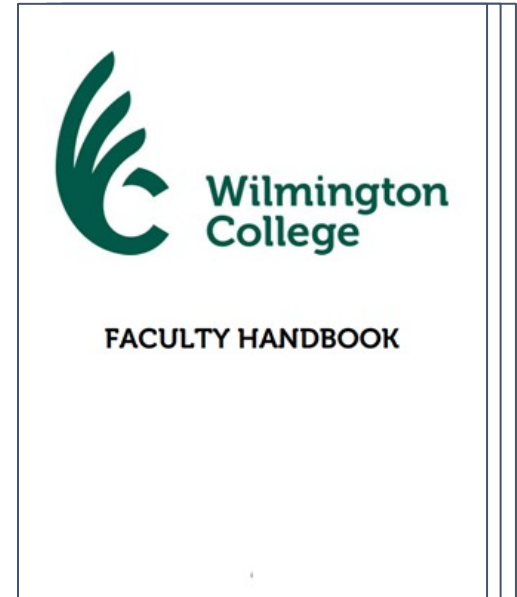
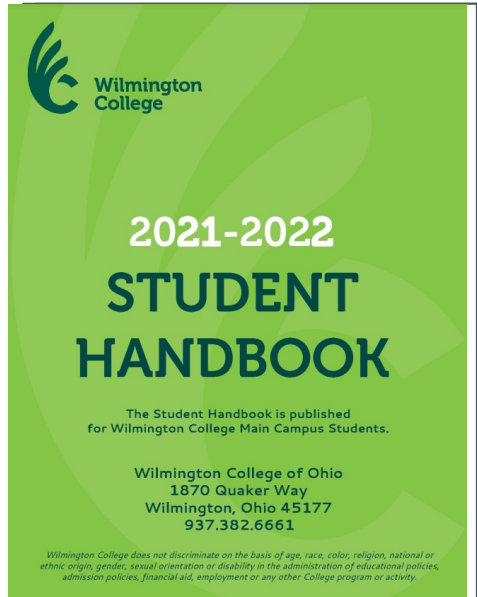
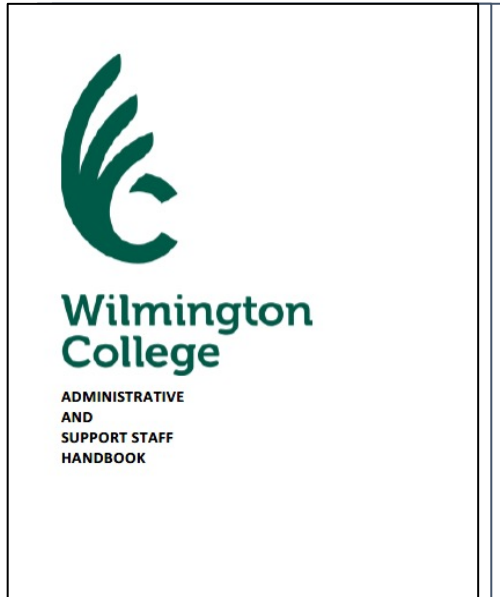


Title IX

“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”



Wilmington College's Title IX Policy



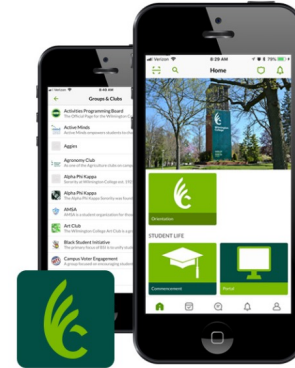
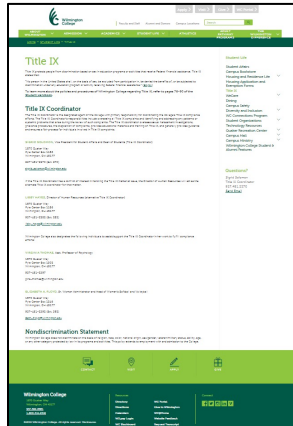
Wilmington College's Title IX Tools

Website

<https://www.wilmington.edu/student-life/title-ix/>

Mobile App

<https://www.wilmington.edu/current-students/app/>



Introduction to Title IX Parties

Complainant	Individual alleged to be the victim of conduct that could constitute sexual harassment.
Respondent	Individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Introduction to Title IX Process Participants

Title IX Coordinator	Designated agent of the College with primary responsibility for receiving reports and formal complaints of sexual harassment, signing formal complaints, and generally coordinating the College's compliance with Title IX.
Alternate Title IX Coordinator	Will act as Title IX Coordinator where the Title IX Coordinator has a conflict of interest in handling or is otherwise unable to handle the Title IX matter at issue.

Introduction to Title IX Process Participants

**Title IX
Coordinator**

Sigrid Solomon
Vice President for Student Affairs/Dean of Students
(937) 481-2270 (Ext. 270)
sigrid_solomon@wilmington.edu

**Alternate Title
IX Coordinator**

Libby Hayes
Director of Human Resources
(937) 481-2282 (Ext. 282)
libby_hayes@wilmington.edu

Introduction to Title IX Process Participants

Investigator(s)	One or more individual(s) designated by Title IX Coordinator to conduct the investigation of the allegations following a formal complaint of sexual harassment.
Adjudicator	Third-party designated by the Title IX Coordinator to conduct a live hearing following the investigation and make a determination regarding responsibility and remedies and sanctions, if any.

Introduction to Title IX Process Participants

Appeal Board

Three individuals designated by Title IX Coordinator to conduct a review of the complete record and the Adjudicator's determination and make a final determination.

Title IX Coordinator Responsibilities

Title IX Coordinator is primarily responsible for

1. Receiving reports and formal complaints of sexual harassment;
2. Signing formal complaints;
3. Overseeing the College's response to reports and formal complaints of sexual harassment, including providing supportive measures;
4. Generally coordinating the College's compliance with Title IX and the Policy, including all aspects of the grievance process;

Title IX Coordinator Responsibilities

5. Communicating with and providing required notices and materials to parties;
6. Documenting all procedural steps taken from the receipt of the formal complaint through the final determination;
7. Overseeing the College's documentation and recordkeeping;
8. Providing educational materials and training on Title IX; and
9. Generally providing guidance and ensuring a fair process for individuals involved in Title IX complaints.

Scope of Title IX

The Policy applies to sexual harassment in the College's **education programs or activities** against a person in the United States.



Applies to conduct that occurs on campus or at locations or events, or under circumstances over which the College exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and includes any building owned or controlled by a student organization that is officially recognized by the College.

Scope of Title IX

The Policy applies to sexual harassment in the College's education programs or activities **against a person in the United States.**



Applies to conduct of any person in the United States—*e.g.*:

- Students
- Employees
- Contractors
- Volunteers
- Visitors

Sex Discrimination

Conduct that denies or limits an individual's ability to benefit from or fully participate in educational programs, activities, co-curricular programs including athletics or employment opportunities because of an individual's sex, gender, gender identity, gender expression or sexual orientation, and discrimination based on an individual's pregnancy.

Sexual Harassment

Conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct (*quid pro quo* harassment);
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking.

Examples of Sexual Conduct

- Making sexual propositions or pressuring an individual for sexual favors;
- Touching of a sexual nature;
- Written graffiti of a sexual nature;
- Displaying or distributing sexually explicit drawings, pictures, or written materials;
- Performing sexual gestures or touching oneself sexually in front of others;
- Telling sexual or “dirty” jokes;
- Spreading sexual rumors or “rating” others as to sexual activity or performance; or
- Circulating or showing e-mails or websites of a sexual nature.

Severe, Pervasive and Objectively Offensive

Whether conduct is so severe, pervasive and objectively offensive depends upon the surrounding circumstances, expectations, and relationships, including, but not limited to, the ages, number, disability status, and positions of authority of the individuals involved, among other factors and is an objective inquiry—*i.e.*, determined from the perspective of a reasonable person standing in the shoes of the complainant.

Consent ≠ Conduct Was Welcome

When a complainant acquiesces to unwelcome conduct to avoid potential negative consequences, such “consent” does not necessarily mean that the sexual conduct was not “**unwelcome**” or that *quid pro quo* harassment did not occur.



Whether conduct is “unwelcome” is a subjective inquiry—*i.e.*, whether the complainant viewed the conduct as unwelcome.

Consent

Knowingly and willingly agreeing verbally or non-verbally to engage in sexual activity.
An individual cannot consent when:

- Incapacitated;
- Impaired by any drug or alcohol;
- Purposefully compelled by force, including threats, intimidation, and coercion;
- Unaware of the action being committed;
- Impaired due to mental or physical condition; or
- Under the age of 16.

Incapacity

A state in which rational or reasonable decision-making and the ability to consent is rendered impossible because of a person's temporary or permanent physical or mental impairment including, but not limited to, physical or mental impairment resulting from drugs or alcohol, disability, sleep, unconsciousness, involuntary physical restraint, or illness.

Incapacity

Sexual activity with someone who one **knows or should know** to be incapacitated is not consented sexual activity and is a violation of the Policy.



A determination as to whether a person should have known that another person is incapacitated is objective—*i.e.*, based upon what a reasonable, sober person would have known about the condition of the incapacitated person in the same situation.

Force

The use of physical violence or physical imposition to gain sexual access, including the use of **threat**, **intimidation** (implied threats), or **coercion** to overcome a person's free will or resistance.



Threat and intimidation: actual or implied declarations to inflict physical or psychological harm, to cause damage, or to commit other hostile actions to obtain sexual activity from an unwilling participant.

Coercion: applying unreasonable pressure to obtain sexual activity from an unwilling participant.

Sexual Assault

Includes both **forcible** and **nonforcible sex offenses**.



Forcible sex offense: a sexual act directed against another person, without their consent and includes: forcible rape; forcible sodomy; sexual assault with an object; and forcible fondling.

Nonforcible sex offense: unlawful, nonforcible sexual intercourse and includes: incest; and statutory rape.

Sexual Assault: Forcible Rape

The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her/their temporary or permanent mental or physical incapacity.

Sexual Assault: Forcible Sodomy

Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her/their youth or because of his/her/their temporary or permanent mental or physical incapacity.

Sexual Assault: Sexual Assault with an Object

To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her/their youth or because of his/her/their temporary or permanent mental or physical incapacity.

Sexual Assault: Forcible Fondling

The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her/their youth or because of his/her/their temporary or permanent mental or physical incapacity.



Sexual Assault: Incest

Nonforcible sexual intercourse between two persons who are related to each other within the degrees wherein marriage is prohibited by law.



Sexual Assault: Statutory Rape

Nonforcible sexual intercourse with a person who is under the statutory age of consent.

Dating Violence

1. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim/survivor; and
2. Where the existence of such a relationship shall be determined based on consideration of the following factors:
 - a. The length of the relationship;
 - b. The type of relationship; and
 - c. The frequency of interaction between the persons involved in the relationship.

Domestic Violence

Includes felony or misdemeanor crimes of violence committed:


1. by a current or former spouse or intimate partner of the victim/survivor;
2. by a person with whom the victim/survivor shares a child in common;
3. by a person who is cohabitating with or has cohabitated with the victim/survivor as a spouse or intimate partner;
4. by a person similarly situated to a spouse of the victim/survivor; or
5. by any other person against an adult or youth victim/survivor who is protected from that person's acts under the state's domestic or family violence laws.

Stalking

1. Engaging in a course of conduct,
2. Directed at a specific person,
3. That would cause a reasonable person to
 - a. Fear for his/her safety or the safety of others, or;
 - b. To suffer substantial emotional distress.

College's Duty to Respond

The College must respond promptly and in a manner that is not deliberately indifferent where it has **actual knowledge** of sexual harassment in an education program or activity against a person in the United States.



Actual knowledge is notice of sexual harassment or allegations of sexual harassment to the College's Title IX Coordinator or any College official with authority to institute corrective measures on behalf of the College.

Officials with Authority

Reports Involving Students	Reports Involving Employees
President	President
Vice President of Student Affairs/Dean of Students	Director of Human Resources
Vice President for Academic Affairs/Dean of Faculty	Vice President for Academic Affairs/Dean of Faculty
Vice President of External Programs (Cincinnati Branch)*	Vice President of External Programs (Cincinnati Branch)*
Director of Diversity and Inclusion	

*Where the complainant or respondent participates in the College's Cincinnati Branch.

Reporting: Who Can Report?

Any person, whether or not the person reporting is the complainant—*i.e.*, the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment.



Reporting: How to Report

Reports may be made at any time in person, by mail, by telephone, or by electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report, including reporting to the Alternate Title IX Coordinator.

Response to a Report

Title IX Coordinator must

1. Promptly contact the complainant to discuss the availability of supportive measures, without or without filing of a formal complaint;
2. Provide to the complainant a copy of the Policy; and
3. Explain to the complainant their right to file a formal complaint and the process for filing a formal complaint.

Supportive Measures

Title IX Coordinator is responsible for coordinating the effective implementation of **supportive measures** and will consider the complainant's wishes with respect to supportive measures.



Supportive measures are non-disciplinary services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Formal Complaint

A formal complaint is a **document filed by a complainant** or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the allegation of sexual harassment.



A document filed by a complainant is a document or electronic submission—*i.e.*, electronic mail—that contains the complainant's physical or digital signature, or otherwise indicated that the complainant is the person filing the formal complaint.



Filing a Formal Complaint

Filing of a formal complaint with the Title IX Coordinator may be accomplished (1) in person, (2) by mail, or (3) by electronic mail, by using the contact information of the Title IX Coordinator provided in the Policy.



Response to a Formal Complaint

Only a formal complaint of sexual harassment will prompt an investigation and grievance process.

Documentation of Grievance Process

The Title IX Coordinator (**with the assistance of the Investigators** and Adjudicators) will document all procedural steps taken from the receipt of the formal complaint through the final determination.



Prior to the live hearing, the Title IX Coordinator will provide a summary of all procedural steps to date to the Adjudicator.

Confidentiality

The College will keep confidential the identity of any individual who has made a report or formal complaint of sex discrimination or sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination or sexual harassment, any respondent, and any witness, **except** under the following circumstances:

1. As may be permitted by the Family Educational Rights and Privacy Act;
2. As required by law; or
3. To carry out the purposes of the Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding.



Confidentiality

To the extent possible and consistent with the exceptions, the College's disclosure of information relating to a formal complaint will be limited to the individuals conducting the College's investigation or resolving the complaint.

Confidentiality

If the complainant requests confidentiality or asks that the complaint not be pursued or that the College stop the investigation process, the Title IX Coordinator will inform the complainant that

1. Its ability to respond may be limited as a result, but that it will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or the request not to pursue an investigation;
2. Title IX prohibits retaliation and that it will take actions to prevent retaliation and take strong action against anyone who engages in retaliation; and
3. The complainant has a right not to participate in the grievance process.

Confidential Reporting

Sources to whom students may report sexual harassment who may maintain complete confidentiality:

- Professional counselors (*e.g.*, College's Counseling Center);
- Pastoral counselors;
- Doctors and nurses (*e.g.*, College's Health Center); and
- Victim or survivor advocates (OVW grant advocates) employed/contracted with the College.



Informal Resolution

Where a formal complaint is filed, and at any time prior to reaching a determination regarding responsibility, the College may facilitate an informal resolution process that does not involve a full investigation and adjudication.

Informal Resolution

An informal resolution process may only be utilized where:

1. The parties are provided written notice of the allegations, the requirements of the informal resolution process, and any consequences resulting from participating in the informal resolution process; and
2. The parties provide voluntary, written consent to the informal resolution process.

Withdraw from Informal Resolution

At any time prior to agreeing to a resolution under this process any party may withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, including where a party is dissatisfied with a proposed informal resolution.

Equity in the Grievance Process

The grievance process treats complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent and by following the grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures.



Equity in the Grievance Process

Respondents are presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

Conflict of Interest and Bias

The Title IX Coordinator, Alternate Title IX Coordinator, Investigator(s), any decision-maker(s), including any Adjudicator and the Appeal Board member, and any person designated to facilitate an informal resolution process may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

What is a Conflict of Interest?

Generally, a conflict of interest is a personal, financial or other interest that may impair an individual's ability to impartially fulfill an official responsibility or perform an official duty.

What is Bias?

Generally, bias is a predisposition against or in favor of, or a preconceived opinion about, **a party or a class of persons** that inhibits an individual from impartially evaluating facts or making a determination.



This includes an individual's membership in a protected class under the law—*e.g.*, race, gender, age, disability, religion.



How to Serve Impartially

In order to serve impartially in the Title IX process, you must avoid prejudgment of the facts, conflicts of interest, and biases for or against any party.

Reports of Conflict of Interest and Bias

Reports of a conflict of interest or bias should be made to the following:

- Reports concerning Investigator(s) or decision-maker(s) should be reported to the Title IX Coordinator.
- Reports concerning the Title IX Coordinator should be reported to the Alternate Title IX Coordinator and vice versa.

Reports of Conflict of Interest and Bias

Reports of conflict of interest and bias will be evaluated in light of the particular circumstances and are determined using an objective analysis—*i.e.*, whether a reasonable person would believe bias exists—and a common-sense approach.

Notice of Grievance Process

Upon receipt of a formal complaint, the Title IX Coordinator will provide written notice to known parties that includes:

1. notice of the **grievance process**;
2. notice of the **allegations of sexual harassment**;
3. a statement that the **respondent is presumed not responsible** for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;

Notice of Grievance Process

4. notice that the parties may have an **advisor of their choice**;
5. notice that the parties may **inspect and review evidence** obtained as part of the investigation;
6. notice of any provision in the College's code of conduct that **prohibits knowingly making false statements or knowingly submitting false information** during the grievance process; and
7. notice that making a **good faith formal complaint** that is not later substantiated does not constitute providing false or misleading information.

Grievance Process Time Frames

The College will exercise good faith to investigate and conclude the grievance process in a reasonably prompt time frame:

Grievance Process	Time Frame
<u>Formal complaint through investigation</u>	<u>60 days</u>
<u>Formal complaint through final investigative report</u>	<u>90 days</u>
Formal complaint through live hearing	120 days

Extensions and Temporary Delays

Temporary delay of the grievance process or a limited extension of time frames may be permitted for **good cause**.



Good cause may include, but is not limited to, the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.



Extensions and Temporary Delays

The Title IX Coordinator will provide written notice to the complainant and the respondent of any temporary delay or limited extensions and the reasons for such action.



Advisors

During **any related meeting or grievance proceeding**, the parties may be accompanied by an advisor of their choice, who may be a member of the College community, an attorney, or another individual not affiliated with the College.

Limitations of Advisors

- Except to conduct cross examination during a live hearing, advisors are not permitted to engage in the grievance process on the party's behalf or participate directly in any related meeting or proceeding.
- Advisors may quietly consult with his or her advisee during a related meeting or proceeding in a manner that does not disrupt or interfere with the meeting or proceeding.
- If an advisor fails to act in accordance with these procedures, he or she may be asked to leave the meeting or proceeding.

Designation of Investigators

Following the receipt of a formal complaint of sexual harassment, the Title IX Coordinator will designate one or more Investigators—who may be College faculty or staff who have received this training—to conduct the investigation.



When the complaint is made against an employee, at least one of the designated Investigators will be a member of the Office of Human Resources.

Investigator Responsibilities

Investigators are primarily responsible for

1. Objectively and impartially **gathering evidence**;
2. **Compiling evidence** for review by the parties; and
3. **Creating an investigative report** that fairly summarizes all relevant evidence.

Gathering Evidence



Goal is to gather as much factual information as you can!

Gathering Evidence

1. **Evidence provided by the parties:** both the complainant and the respondent may present written and oral statements, names of witnesses, and other evidence to the Investigators.
2. **Evidence obtained by the Investigators:** the Investigators must also actively discover additional evidence.
 - Interviews – the complainant, respondent, and any witnesses should be interviewed.
 - Physical evidence and documentation – interviews should be supplemented by the gathering of any physical, documentary, or other evidence, as appropriate and available.

Gathering Evidence: Interviews

1. Interview both the complainant.
2. Interview respondent.
3. Interview all other witnesses identified by the parties or through other evidence (*e.g.*, through emails, text messages, interviews of other witnesses, or criminal investigation)

Note: The College cannot force anyone to participate in the Title IX process. However, the investigation may still go forward if a party or other witness refuses to participate or cooperate. Investigators should document any refusal to participate or cooperate.

Gathering Evidence: Prepare for the Interviews

Review the formal complaint and any other evidence you already have (e.g., witness statements, notes from other interviews, or other documentation).

Tip: Use this information to help prepare questions.

Gathering Evidence: Prepare for the Interviews

Review the definitions of the alleged conduct to determine what information you should illicit for the Adjudicator to make a determination.

Tip: Use these definitions to help prepare questions.

Example

Complainant alleges rape by Respondent.

3.3.1 **Forcible rape** – the carnal knowledge of a person, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of his/her/their temporary or permanent mental or physical incapacity.

Rape can be by force **OR** by lack of consent due to incapacity.

Tip: Remember to review definitions within definitions!

Example Continued...

3.2.3 Consent

For purposes of this Policy, **consent** is defined as the act of knowingly and willingly agreeing verbally or non-verbally to engage in sexual activity.

An individual cannot consent if he/she/they

- a) Is incapacitated;
- b) Is impaired by any drug or intoxicant;
- c) Has been purposely compelled by force, including threats, intimidation, or coercion;
- d) Is unaware that the act is being committed;
- e) Is impaired because of a mental or physical condition; or
- f) Pursuant to Ohio law, is under the age of sixteen (16).

Consent must exist throughout a sexual encounter and can be withdrawn at any time.

Example Continued...

3.2.4 Incapacity

Incapacity means a state in which rational or reasonable decision-making and the ability to consent is rendered impossible because of a person's temporary or permanent physical or mental impairment including, but not limited to, physical or mental impairment resulting from drugs or alcohol, disability, sleep, unconsciousness, involuntary physical restraint, or illness.

- a) An incapacitated person cannot give consent.
- b) Sexual activity with someone who one knows or should know to be incapacitated is not consented sexual activity and, therefore, is a violation of this policy.
- c) Incapacitation may result from taking "rape drugs." A rape drug is any drug intentionally used to incapacitate another victim to assist in the execution of drug-facilitated sexual assault. Possession, use and/or distribution of any so-called "rape drug" is prohibited, and administering these drugs to another person is a violation of this policy.
- d) Being under the influence of alcohol or other drugs will not excuse behavior that violates this policy.

Example Continued...

3.2.5 Force

Force means the use of physical violence or physical imposition to gain sexual access, including the use of threat, intimidation (implied threats), or coercion to overcome a person's free will or resistance.

Force can include physical violence or physical impositions, **threats or intimidation,**
OR coercion.

Example Continued...

3.2.6 Threat or intimidation

Threat or intimidation mean actual or implied declarations to inflict physical or psychological harm, to cause damage, or to commit other hostile actions to obtain sexual activity from an unwilling participant.

3.2.7 Coercion

Coercion means unreasonable pressure for sexual activity from an unwilling participant.

Gathering Evidence: Prepare for the Interviews

Consider information to illicit for each of the applicable definitions.

Tip: Keep the policy handy during interviews so that you may reference other potentially applicable definitions as you gather information.

Gathering Evidence: Prepare for the Interviews

Come prepared with questions, but don't let the questions you prepared control the interview.

Tip: Treat prepared questions as a checklist – by the end of the interview, check the list to ensure that you have covered the questions and information. If not, follow up with the questions you prepared.

Gathering Evidence: Conducting an Interview

- Ask open-ended questions (avoid yes/no questions).
- Avoid leading questions that suggest an answer.
- Listen.
 - Ensure the witness answers the question you asked.
 - Avoid interrupting a witness.
- Ask follow-up questions to get as much detail as possible.
 - Who, when, where, why, how?

Gathering Evidence: Physical Evidence & Documents

Physical, documentary, or other evidence that may be available from parties and witnesses:

- Text messages
- Emails
- Photos (e.g., screenshots or injuries)
- Phone records
- Police records (e.g., statements, reports)
- Medical records

Gathering Evidence: Physical Evidence & Documents

Evidence that may be available from the College:

- Campus safety reports and statements
- Police reports
- Video surveillance
- Access to physical locations on campus for site visit/observation (*e.g.*, dorm room)

Privileged Evidence

The College does not allow, reply upon, or otherwise use questions or evidence that constitute or seek disclosure of information protected under legally recognized privilege, such as the attorney-client privilege or the doctor-patient privilege, unless the person holding such privilege waives it.



Compiling Evidence

Prior to completion of the investigative report, the Investigators will compile all evidence gathered in electronic or hard copy form and provide the evidence to the Title IX Coordinator.

Inspection and Review of Evidence

Parties 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 so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

Inspection and Review of Evidence

Upon receipt of all evidence from the Investigators, the Title IX Coordinator will

1. Review the evidence and make any redactions as required by FERPA; and
2. Will send the evidence in electronic or hard copy form to the parties and their advisors for review and inspection.



Written Response to Evidence

The parties will have at least 10 days to submit a written response, which the Investigators will consider prior to completion of the investigative report.



Creating an Investigative Report

The Investigators will create an investigative report that fairly summarizes relevant evidence and provide the report to the Title IX Coordinator.

Contents of Investigative Report

The final investigative report should include

1. Formal complaint **allegations**;
2. Applicable **policy provisions**;
3. A summary of **all procedural background**;
4. A summary of **all relevant evidence gathered**; and
5. **Responses to evidence** submitted by the parties.

Summary of Procedural Background

- A summary of report and/or formal complaint
- Steps taken by Title IX Coordinator (will be provided by Title IX Coordinator to Investigators)
- Steps taken by Investigators during the investigations (including interviews, site visits, efforts and methods used to gather other evidence, evidence and materials provided to the Title IX Coordinator)
 - Summarize all steps taken, **even if not successful** (*e.g.*, witness would not respond to Investigators)
- Any other procedural matters (*e.g.*, extensions of time)

Summary of Relevant Evidence

Summarize any evidence provided in formal complaint, witness interviews, and physical evidence and documents.

- Summarize in narrative form or bullet points or both.
- Include details.
- Include quotes from interviews (if particularly notable).
- Include observations of witnesses and evidence.

Written Responses

1. Include a summary of the written responses (including whether a party failed to submit a written response); and
2. Attach written responses to the report.



General Format

INVESTIGATIVE REPORT

Complainant _____
Respondent _____
Title IX Coordinator _____
Investigators _____
Date of Formal Complaint _____

I. Formal Complaint Allegations

II. Applicable Policy Provisions

III. Procedural Background

A. Formal Complaint

B. Investigation

C. Other Procedural Matters

IV. Summary of Relevant Evidence

A. Complainant's Formal Complaint and Witness Interview

B. Respondent's Witness Interview

C. Witness 1 Interview

D. Witness 2 Interview

E. Physical Evidence & Documents

V. Responses to Evidence

A. Complainant's Response

B. Respondent's Response

Dated: _____

Investigators:

Investigator 1

Investigator 2

After the Investigation...

- Title IX Coordinator reviews report; sends to parties for review and written response; and provides final report with responses to Adjudicator.
- Adjudicator will conduct a live hearing; make a written determination regarding responsibility; and determine remedies and sanctions, if any.
- Either party may appeal to the Appeal Board.



Right to Appeal

Both parties may appeal the Adjudicator's written determination by filing a written appeal to the Title IX Coordinator within **10 days** from receipt of the written determination.

Written Appeal

The written appeal must include

1. The bases for the appeal, and
2. All relevant information and arguments in support.



Notice of Appeal

The Title IX Coordinator will promptly notify the other party in writing when an appeal is filed.

Bases for Appeal

Either party may appeal any determination and/or sanction or any dismissal of a formal complaint or any allegations therein on any of 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 regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), or decision-maker(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.



Appeal Board

Following the receipt of written request for appeal, the Title IX Coordinator will designate **three members to the Appeal Board**—who may be College faculty or staff who have received this training—to review the complete record and the Adjudicator’s determination and make a final determination.

Appeal Board Responsibilities

The Appeal Board is primarily responsible for

1. Determining whether the appeal is permitted;
2. Reviewing the complete record;
3. Making a final determination; and
4. Preparing a written decision.

Appeal Approval

The Appeal Board will review the written request for appeal and determine whether the appeal is permissible—*i.e.*, limited to one or more of the permissible bases.



The Title IX Coordinator will coordinate with the Appeal Board to notify the parties whether the Appeal Board has permitted the appeal within 10 days of receipt of the written appeal.



Appellee Response

If an appeal is permitted, the appellee—*i.e.*, the party who did not submit the appeal—will be provided with the written appeal and shall have 10 days, including the date of receipt, to respond in writing to the statement of the appellant—*i.e.*, the appealing party.

Appeal Board Review

The Appeal Board will review the complete record and determine—by a majority vote—the merit of the appeal applying the preponderance of the evidence standard.



Preponderance of the evidence = more likely than not.

Appeal Board Determination

The Appeal Board may affirm, reverse, or modify the determination and/or sanction of the Adjudicator, or remand the matter for further investigation and/or analysis.



If the matter is remanded, the process will repeat, generally beginning at the appropriate stage of the investigation or grievance process as indicated by the Appeal Board's remand.

Review of Remedies and Sanctions

Remember: the grievance process treats complainants and respondents equitably by

1. Providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent; and
2. Following a grievance process prior to the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

Remedies

Where a determination of responsibility for sexual harassment has been made against the respondent, remedies are designed to restore or preserve equal access to the College's education programs or activities, to stop the conduct, prevent its recurrence, and address its effects.

↳ Remedies may include supportive measures, but may also be disciplinary or punitive and need not avoid burdening the respondent.



Remedies

The Title IX Coordinator is responsible for effective implementation of any remedies.

Available Remedies & Disciplinary Sanctions

For students, remedies and disciplinary sanctions may include any of those set forth in the Student Handbook and Student Code of Conduct, including modification of living arrangements, dismissal, suspension, reporting to the local police, and other remedies and sanctions determined by the College to be appropriate.

Available Remedies & Disciplinary Sanctions

For employees, remedies and disciplinary sanctions may include any of those set forth in the Faculty Handbook or Staff Handbook, including termination, suspension, removal from campus, cancellation of contract, written reprimand, oral reprimand, and other remedies and sanctions determined by the College to be appropriate.

Determining Remedies & Disciplinary Sanctions

When determining the appropriate remedies or sanctions to be imposed, consider the principle that the sanctions should be proportionate to the offense and seek to provide a remedy to the complainant and to prevent recurrence of the offense for the protection of the campus community.



In doing so, consult with the Title IX Coordinator to obtain information about College precedent for remedies and sanctions.

Written Decision of the Appeal Board

The Appeal Board will prepare a written decision describing the result of the appeal and the rationale for the result and provide it to the Title IX Coordinator who will send the written decision simultaneously to both parties, typically within 5 days following the Appeal Board's written decision and no more than 30 days after approval of the written appeal.



The complainant will be informed of any specific sanctions imposed on respondent directly relating to the complainant in a manner consistent with the requirements of FERPA.

Written Determination

The Appeal Board's written determination should include:

1. A description of the **procedural steps** taken from the receipt of the appeal through the final determination;
2. The **final determination**—*i.e.*, whether the determination and/or sanction of the Adjudicator is affirmed, reversed, or modified, or remanded for further investigation and/or analysis.
3. The **reasoning** for the Appeal Board's final determination.

Remember the Possibility of Remand

- Either the Adjudicator or the Appeal Board may remand the matter back to the Investigators for further investigation.

Retaliation

The College strictly prohibits **retaliation**.



Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX, its regulations, 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 under the Policy.



Questions?