PROCEDURES FOR ADDRESSING PROHIBITED SEXUAL HARASSMENT UNDER TITLE IX

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1) Purpose

WSSU is committed to providing an inclusive and welcoming environment for all members of our community. The University values safety, education, and fairness and is firmly committed to maintaining a campus environment free from Sexual Harassment.

The purpose of this Procedure is to outline the process for a prompt, equitable, impartial, and effective response to reports of Title IX Sexual Harassment as defined in the Policy for Addressing Prohibited Sexual Harassment Under Title IX ("Title IX Policy").

2) Scope

This Procedure applies to the reporting and resolution of conduct that:

- Could constitute Sexual Harassment as defined in the Title IX Policy;
- Occurred against a Complainant in the United States;
- Occurred on or after August 14, 2020;
- Occurred in a location, event, or circumstance over which the University
 exercised substantial control at the time of the alleged conduct, including
 buildings owned or controlled by a student organization that are officially
 recognized by the University;
- Involves a Respondent over whom the University exercised substantial control at the time of the alleged conduct, including University students and employees; and
- Involves Complainant who was participating or attempting to participate in a University program or activity at the time of the alleged conduct.

Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Retaliation that do not meet the definitions and/or jurisdictional requirements set out in these Title IX Policy will be addressed under the appropriate and applicable university policy.

3) <u>Title IX Coordinator</u>

The University has designated and authorized a Title IX Coordinator to coordinate its efforts to comply with its responsibilities under 34 C.F.R. Part 106. The University will notify applicants for admission and employment, students, employees, contractors, and vendors of the name and title, office address, electronic mail address, and telephone number of the Title IX Coordinator.

Title IX Coordinator Office: 125 Blair Hall

601 S. Martin Luther King Jr. Drive

Winston-Salem, NC 27110

P: 336-750-8758

Email: Contacttitleix@wssu.edu

All references to the Title IX Coordinator in this document are intended to include the Title IX Coordinator or their appointed designee.

4) Reporting Title IX Sexual Harassment

A report of harassment, and/or retaliation may be made using any of the following options:

A report of a violation of the Title IX Policy may be reported at any time, regardless of the length of time between the alleged offense and the decision to report. The University encourages reporting so that we can provide individuals with support and resources. Complainants also are encouraged to report incidents of criminal activity to the police.

Reporting carries no obligation for the complainant to initiate a formal complaint or investigation. The University observes complainants' requests to forgo a formal investigation unless there is a compelling threat to health or safety. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, or violence.

An individual can submit a report using the reporting form on the <u>WSSU Title IX</u> webpage or by contacting the following resource(s) at any time:

Title IX Coordinator Office: 125 Blair Hall

601 S. Martin Luther King Jr. Drive

Winston-Salem, NC 27110 Email: Contacttitleix@wssu.edu

Any person may report sex discrimination, including Sexual Harassment, to the Title IX Coordinator in person, by mail, by telephone, by electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or Sexual Harassment. Reports may be made at any time, including during non-business hours, by using the contact information listed above.

After normal business hours and weekends, you can also contact WSSU Police and Public Safety at 336-750-9111 for an immediate response.

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012 TDD#: (877) 521-2172 Email: OCR@ed.gov

Web: http://www.ed.gov/ocr

5) No Time Limits on Reporting

There is no time limitation on providing reports/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on reports/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures, remedies, and/or engage in informal or formal action, as appropriate.

6) Mandated Reporting and Confidential Employees

All WSSU employees, including student-employees, are designated as Required Reporters, except for those classified as Confidential Employees. Required Reporters must promptly report any notice or allegations of Title IX policy violations involving a student to the Title IX Coordinator.

All WSSU officials and employees with the authority to institute corrective measures on behalf of the university are mandated to report any notice or allegations of Title IX policy violations, including employee-on- employee misconduct to the Title IX Coordinator. Employees without this authority are encouraged, but not required under federal regulations, to direct such reports to the Title IX Coordinator.

Supportive measures may be provided following such disclosures, even in the absence of formal university action. Complainants should carefully consider the information they share with Required Reporters, as any personally identifiable details must be reported to the Title IX Coordinator.

Campus Confidential Resources

To enable Complainants to access support and resources without filing a report, WSSU has

designated specific employees as Confidential Resources. Those designated by WSSU as Confidential Resources are not required to report actual or suspected discrimination, harassment, or retaliation in a way that identifies the Parties.

There are three categories of Confidential Employees: 1) Those with confidentiality bestowed by law or professional ethics, such as lawyers, medical professionals, clergy, and counselors; 2) Those whom WSSU has specifically designated as confidential for purposes of providing support and resources to the Complainant; and 3) Those conducting human subjects research as part of a study approved by WSSU's Institutional Review Board (IRB). For those in category 1 above to be able to respect confidentiality, they must be in a confidential relationship with the person reporting, such that they are within the scope of their licensure, professional ethics, or confidential role at the time of receiving the Notice. These individuals will maintain confidentiality, except disclosures may be made in extreme cases of immediacy of threat or danger or abuse of a minor, elder, or individual with a disability or when required to disclose by law or court order.

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with the following Confidential Employees:

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff

Institutional counselors and medical professionals are available to help free of charge.

7) Supportive Measures

The University will make available supportive measures to the parties. Supportive measures are available before or after the filing of a formal complaint, or where no formal complaint has been filed. Supportive measures are non-disciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge.

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.

Supportive measures may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees

- Safety planning
- Providing campus safety escorts
- Providing transportation assistance
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

8) Policy Definitions

Complainant means the individual(s) who is alleged to be the victim of conduct that could constitute Title IX Sexual Harassment or Retaliation.

Respondent means the individual(s) who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment or Retaliation.

Employee means any faculty or staff member, whether part-time or full-time, permanent or temporary, including post-doctoral scholars. For the purposes of this Policy, employees who are also students are considered employees if the Reporting Party alleges that the student-employee conditioned the provision of University aid, benefits, or services which the student-employee had the authority or ability to provide on the Reporting Party's participation in unwelcome Sexual Contact.

The section below describes the specific forms of harassment that are prohibited under University Policy. All offense definitions encompass actual and/or attempted offenses.

A. Title IX Sexual Harassment

The University has adopted the following definitions of sexual harassment in order to address the unique environment of an academic community. Title IX Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. Sexual Harassment includes conduct on the basis of sex that satisfies one or more of the following:

Quid Pro Quo: An employee of the University, conditions¹ the provision of an aid, benefit, or service of the University, on an individual's participation in unwelcome sexual conduct.

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¹ Implicitly or explicitly.

Sexual Harassment: Unwelcome conduct, determined by a reasonable person, to be so severe, and pervasive, and, objectively offensive, that it effectively denies a Complainant equal access to the University's education program or activity.²

Sexual Assault, defined as:

Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without Complainant's consent.

Fondling: The touching of the private body parts of the Complainant (buttocks, groin, breasts), for the purpose of sexual gratification, without Complainant's consent.

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of Consent.

Dating Violence: Violence committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition:

• Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

• Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence³: Violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of North

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² Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

³ To categorize an incident as Domestic Violence under these Procedures, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

Carolina, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of North Carolina.

Stalking⁴: Engaging in a course of conduct directed at the Complainant that would cause a reasonable person to fear their safety, or the safety of others; or suffer substantial emotional distress.

B. Consent.

Consent: Voluntary, informed, clear permission by word or action, revocable at any time to engage in sexual activity.

The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct.

Whether an individual actively and willingly participates in conduct may be a factor in determining whether there was consent. Clear communication from the outset is strongly encouraged.

If consent is withdrawn, that sexual activity should cease. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. Consent is not given in situations involving coercion, force, or incapacitation as defined below:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and

⁴ Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Reasonable

person means a reasonable person under similar circumstances and with similar identities to the Complainant. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want."). Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Incapacitation: Incapacitation is the physical and/or mental inability to understand the fact, nature, or extent of the sexual situation. Incapacitation is a temporary or permanent state in which an individual is unable to give consent to sexual contact due to mental, developmental, or physical impairment, or from the influence of alcohol or drugs. States of incapacitation include but are not limited to sleep, unconsciousness or intermittent consciousness, involuntary physical restraint, or any other state where an individual is unaware of sexual contact.

Incapacitation due to alcohol or other drugs goes beyond mere intoxication; a person is not considered incapacitated simply because they have been drinking or using drugs. When alcohol or drugs are involved, incapacitation is assessed based on the specific facts and circumstances of the situation. This includes evaluating whether the individual could comprehend the fact, nature, or extent of the sexual encounter; whether they could express decisions about consent, refusal, or withdrawal of consent; and whether their condition was known or should have been known by the Respondent or a reasonable sober person in the Respondent's position. The Respondent's use of alcohol or drugs does not serve as a defense against allegations of non-consensual sexual contact.

Coercion: Coercion is undue pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent.

C. Retaliation

Intimidation, threats, coercion, or discrimination for the purpose of interfering with any right or privilege secured by Title IX or against an individual for engaging in protected activity. Protected activity consists of making a report or complaint about conduct reasonably believed to constitute a violation of the Title IX Policy, or testifying, assisting, or participating in any manner in an investigation or other proceeding related to such a complaint.

9) Emergency Removal

The University can act to remove a student Respondent from its education program or activities—partially or entirely—on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.

When an emergency removal is imposed, the Respondent will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon as reasonably possible thereafter, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. This meeting must be requested within three (3) business days of the notice of action/removal. If a timely request is not made, the objections to the emergency action/removal will be deemed waived. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under Title IX Policy to implement or modify an emergency removal and to determine the conditions and duration. Violation of an emergency removal under Title IX Policy will be grounds for discipline, which may include expulsion or termination.

The University will attempt to implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take incomplete grades without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural/club athletics.

If the Respondent is an employee or student employee accused of misconduct during the course of their employment, existing provisions for interim action, if applicable, will take precedence over the emergency removal process outlined above.

10) Confidentiality/Privacy

WSSU will not share the identity of any individual who has made a report or Formal Complaint of harassment, discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of harassment, discrimination, or retaliation; any Respondent; or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA) or required by law; or to carry out

resolution process arising under procedures.

Documents prepared in anticipation of any hearing, such as pre-hearing submission, notices of hearing testimony, and information submitted at the hearings may not be disclosed outside the investigation and hearing proceedings, except as may be required or authorized by law or the Title IX Coordinator.

The University, in accordance with Title IX compliance, will to the extent practicable, try to comply with the wishes of the individual regarding their request for confidentiality or not pursuing a hearing. The University will take such requests seriously; however, such requests may limit the University's ability to investigate and take reasonable action. Under federal law, the University may be required to move forward with an investigation and take reasonable action in response to the complaint, no matter if these steps may be limited by a request for confidentiality. Title IX requires the University to evaluate the request of the complaint next to the University's concern for the safety, well-being, and nondiscriminatory environment.

11) False Allegations and Evidence

Knowingly falsifying, distorting, or misrepresenting information provided to the Title IX Coordinator, investigator, Hearing Officer, or appellate decision maker(s), or any official conducting an investigation, hearing, or informal resolution; knowingly tampering with or destroying evidence; or knowingly instituting a formal complaint or submitting a report in bad faith are serious offenses and will be subject to disciplinary action under appropriate university policies. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

12) Amnesty

Sometimes, individuals may be hesitant to report to the University officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. To encourage reporting and participation in the process, the University typically offers parties and witnesses amnesty from minor policy violations—such as underage consumption of alcohol or the use of illicit drugs—related to the incident.

13) Ensuring Impartiality

Any individual materially involved in the administration of the Resolution Process including the Title IX Coordinator, investigator(s), and decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

At any time during the Resolution Process, the parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable.

The Resolution Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

WSSU operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

Due to availability, absences, conflict of interest, etc., employees may delegate their duties to another trained person upon approval by the Title IX Coordinator. All employees involved in the formal complaint process are trained as required by applicable law.

14) Resolution of a Formal Complaint

A. Overview

Complaints, investigations, hearings, etc. ("Resolution Process") may be consolidated when the allegations of misconduct arise out of the same facts or circumstances or when the Title IX Coordinator deems it prudent to consolidate cases. In addition, the procedures below may be used to address alleged collateral misconduct by the Respondent arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, trespass, physical abuse of another), when alleged violations of the Title IX Policy are being addressed at the same time.

Violations of no contact orders or other restrictions related to the allegations may be referred to appropriate student conduct or employee resolution processes for enforcement or added as collateral misconduct allegations to an ongoing complaint under the Title IX Policy and these associated procedures.

B. Filing a Formal Complaint

A formal complaint is a designated form signed by a Complainant or signed by the Title IX Coordinator alleging the Respondent violated the Title IX Policy and requesting that WSSU investigate the allegation(s).

A Complainant can request a formal complaint form from the Title IX Coordinator. The formal complaint form can be filed with the Title IX Coordinator in person, via mail, email, or in any manner approved by the Title IX Coordinator. If a formal

complaint is submitted in a manner that does not meet the approved standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of the Title IX Policy. The Complainant may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under these Procedures irrespective of their level of participation.

C. Mandatory and Discretionary Dismissal of Formal Complaint A Formal Complaint may be dismissed during the resolution process on certain grounds.

A Formal Complaint will be dismissed if:

- 1. It would not constitute Sexual Harassment as defined under Title IX, even if proved,
- 2. It did not occur in the University's education program or activity,
- 3. It did not occur against a person in the United States.

A Formal Complaint may be dismissed, in whole or in part, at the Title IX Coordinator's discretion, if:

- 1. A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or any allegations in the complaint,
- 2. The respondent is no longer enrolled or employed by the University, or
- 3. Specific circumstances prevent the University from gathering sufficient evidence to reach a determination as to the formal complaint or allegations in the complaint.

The Title IX Coordinator will promptly send written notice of the dismissal, including the reason(s) for the dismissal to the parties. The parties have the opportunity to appeal the dismissal of a formal complaint or any allegations in the formal complaint in the manner set forth in the Appeal Procedures section.

Dismissal does not preclude action under another provision of university policy. Even if the University is unable to take disciplinary action, the University will seek to take appropriate steps to prevent sexual harassment from occurring.

D. Promptness

The university will conduct a timely investigation. Complaints typically take 60 to 90 business days to resolve. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but WSSU will attempt to avoid all undue delays within its control.

WSSU may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to a request from law enforcement to temporarily delay the investigation, the need for language assistance, academic breaks, the absence of parties and/or witnesses, and/or health conditions. The Title IX Coordinator maintains discretion to reasonably advance the process.

WSSU action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

E. Right to an Advisor

Both parties are encouraged to seek the assistance of an advisor to support and accompany them through the process. Each party may have one (1) advisor present with them for support throughout the proceedings.

i) Who Can Serve as an Advisor?

The parties may select whoever they wish to serve as their Advisor as long as the Advisor is available. Available means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor should not have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the Resolution Process.

If a party chooses to participate in the hearing does not have an Advisor at the hearing to question parties or witnesses, the University will provide a Question Facilitator without fee. The Question Facilitator will be responsible for questioning parties or witnesses on behalf of the party using questions drafted by the party.

ii) Advisor Participation in Hearings and Meetings

When scheduling a hearing, the University will make reasonable efforts to accommodate an advisor; however, the availability of the parties; witnesses; the designated administrator, panel members, or board members assigned to the matter; and other necessary participants as well as the expectation to promptly complete the Resolution Process may, in the University's discretion, take priority when determining the date and time for the hearing. WSSU may make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available. Additionally, an advisor may not delay, disrupt, or otherwise interfere with the Resolution Process.

In order for an advisor to participate in any meeting or hearing, designated form(s) must be submitted to the Title IX Coordinator no later than three (3) business days prior to the meeting or proceeding.

F. Investigation

The investigator(s) will seek to speak separately with the Complainant, the Respondent, and any other individuals who have information relevant to the determination of responsibility for a Title IX Policy violation. As part of the investigation, the investigator(s) may gather or receive information that is relevant to the determination of appropriate disciplinary sanctions, corrective measures, or remedies, including information about the impact of the alleged incident on parties. The investigator(s) will also gather any available physical or documentary evidence that is relevant to the determination of responsibility under the Title IX Policy, including prior statements by the parties or witnesses, communications between the parties, email messages, social media materials, text messages, and other records as appropriate and available.

Prior to the completion of the investigation report, 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 contained in the Formal Complaint. Such evidence includes the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence, regardless of the source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation. The Title IX Coordinator will send each party and the party's Advocate, if any, the evidence subject to inspection and review in an electronic format.

After reviewing the evidence, the parties may, but are not required to, submit a response to the investigator(s) in writing identifying any gaps in the evidence collected or any additional relevant facts or witnesses and making any statements regarding the relevance of evidence collected.

After receiving the parties' written responses or after the lapse of ten (10) business days without receipt of such responses, the investigator(s) will consider any written response(s) and create an investigation report, which will fairly summarize the relevant evidence.

The Title IX Coordinator will send each party and the party's Advisor, if any, the investigation report in an electronic format for their review and written response. The investigation report will be sent at least ten (10) business days prior to a hearing. At the conclusion of the investigation phase, the Title IX Coordinator will send a Pre-Hearing Notice to the parties, outlining the date of the hearing, the identity of the Hearing Officer, and relevant procedural information.

G. Hearings

Decisions regarding responsibility will be made by the Hearing Officer after a live hearing. A hearing will provide the parties an equal opportunity to present and question relevant and not otherwise impermissible evidence in front of a Hearing Officer who will make a determination as to whether the Respondent engaged in a violation of University Policy.

i) Hearing Officer

The Title IX Coordinator reserves the right to appoint any trained individuals who are without conflict or bias to serve as a Hearing Officer. The Hearing Officer will not include the Title IX Coordinator or any person who served as an investigator on the matter.

A Hearing Officer may decline to participate, or the parties may request a different Hearing Officer, on the basis of a conflict of interest or bias for or against Reporting Parties or Responding Parties generally or the individual Complainant or Respondent that would change the outcome of the matter. The parties must submit the request in writing to the Title IX Coordinator no later than five (5) business days after receipt of the Pre-Hearing Notice and must clearly state the grounds to support a claim of bias or conflict of interest.

ii) Hearing Procedures

Participants at the hearing may include the Hearing Officer, additional hearing board members to facilitate a determination of responsibility jointly, the hearing facilitator, the parties (or three (3) organizational representatives when an organization is the Respondent), Advisors to the parties, any called witnesses, the Title IX Coordinator, hearing officer/board advisor, and anyone providing authorized accommodations, interpretation, and/or assistive services. The Hearing Officer will allow witnesses who have relevant information to appear at a portion of the hearing to respond to specific questions from the Hearing Officer(s) and the parties, and the witnesses will then be excused.

All parties, witnesses, and other participants may appear at the live hearing virtually with technology enabling participants to see and hear each other simultaneously. At the request of either party, the university will consider conducting an in-person hearing.

Each party will have an equal opportunity to present witnesses and other evidence. Any credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

Each party's Advisor will be permitted to ask the other party and any participating witnesses all relevant questions, including those challenging credibility. This cross-

examination will be conducted directly, orally, and in real time by the party's Advisor and never by a party themselves.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant unless such questions and evidence about the complainant's prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

The University cannot require, access, consider, disclose, allow, rely upon, seek disclosure of, or otherwise use a party's protected records or information without the voluntary, written consent of the relevant party or individual. Protected records or information include, but are not limited to, the following:

- 1. Records that are made or maintained by a physician, psychiatrist, psychologist, counselor, 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; and
- 2. Information protected under a legally recognized privilege (e.g., attorney-client, married individuals, clergy and communicant, psychotherapist and patient, physician and patient, etc.).

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Hearing Officer may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross- examination.

iii) Joint Hearings

In hearings involving more than one Respondent or involving more than one Complainant, can be heard jointly if the Respondent has been accused of substantially similar conduct or allegations that arise out of the same occurrence or series of events.

At the discretion of the Title IX Coordinator, investigations and hearings pertinent to each Respondent or complaint will be conducted separately if there is a compelling reason to do so. Charges against multiple students involved in the same incident may be heard in a single case only if each student respondent consents to such a proceeding. In joint hearings, separate determinations of responsibility will be made for each Respondent and for each complaint with respect to each alleged policy violation.

iv) Hearing Recordings

Hearings (but not deliberations) are recorded by Winston-Salem State University. The parties may not record the proceedings, and no other unauthorized recordings are permitted.

The Hearing Officer, the parties, their Advisors, and appropriate administrators of Winston-Salem State University will be permitted to review the recording or review a transcript of the recording, upon request to the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without the permission of the Title IX Coordinator.

H. Deliberation and Standard of Proof

The Hearing Officer determines responsibility in closed session. In the case of multiple hearing officers, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used.

When there is a finding of responsibility on one or more of the allegations, the Hearing Officer, the parties, their Advisors, and appropriate administrators of Winston-Salem State University may then consider the previously submitted party impact and/or mitigation statement(s) in determining appropriate sanction(s).

As part of that determination of sanctions and remedies, the Title IX Coordinator may, in their discretion, provide the Hearing Officer with information regarding previous conduct violations by the respondent.

I. Notice of Outcome

The Hearing Officer will share the outcome letter, which includes the final determination, rationale, and any applicable sanction(s), with the parties and their Advisors.

The Notice of Outcome will be shared with the parties simultaneously to the parties' WSSU- issued email or any other means of delivery deemed appropriate by the Title IX Coordinator (in-person, mail, to an approved email account, etc.) Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will include a description of the procedural steps taken by WSSU related to the resolution procedure; the finding for each alleged policy violation; a statement of, and rationale for, the result of each allegation to the extent the WSSU is permitted to share such information under state or federal law; remedies designed to restore or preserve equal access to the education program or activity will be provided to the complainant; any sanction(s) issued which the WSSU is permitted to share according to state or federal law; and the relevant procedures and bases for appeal.

I. Sanctions/Remedies

When determining a sanction or responsive action, the following factors may be considered, though they are not limited to:

- the nature and violence of the conduct at issue;
- the effects of the conduct on the Complainant;
- the effects or implications of the conduct on the educational mission, work environment, the community, or the University;
- whether the conduct involved an abuse of power or authority;
- prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, both at the University or elsewhere, including criminal convictions;
- whether the Respondent has accepted responsibility for the conduct;
- maintenance of a safe and respectful environment conducive to learning and working;
- protection of the University community; and
- any other mitigating, aggravating, or compelling circumstances to reach a just and appropriate resolution in each case.

The sanctions and remedies will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

i) Student Sanctions

The following are the common sanctions that may be imposed upon students singly or in combination:

- Expulsion means permanent dismissal. A student who has been expelled from WSSU may not be admitted to another constituent institution of the University, unless and until the sanction of expulsion has been rescinded by WSSU.⁵
- Permanent Suspension means that the student is removed from good standing and must leave the University permanently without an expectation that the student may eventually return to the WSSU campus. The student is not barred, however, from seeking admission to another UNC System university, if that university wishes to permit such application following disclosure of the student's disciplinary record at WSSU.6
- Suspension for a Definite or Indefinite Period means that the student is

⁵ The chancellor or a vice chancellor must make the final administrative decision in all expulsion cases. After an expulsion has become final, the chancellor who imposed or approved the sanction (or his or her successor) may conclude on the basis of the former student's petition and any supportive documentation that the individual should be given a new opportunity to pursue higher education.

 $^{^6}$ A vice chancellor or the vice chancellor's delegate must make the final administrative determination in all suspension cases

removed from good standing and must leave the University for a definite or indefinite period. This form of suspension anticipates that the student may eventually return if applicable conditions are satisfied. Academic work completed at another institution during a period in which a student is under suspension from the University may not be transferred toward the degree, but applicable health care or insurance benefits may be continued if the health insurance premium has already been paid.⁷

- Probation for a Definite or Indefinite Period, including probation with associated conditions or requirements as set by the Hearing Officer, means that a student may remain at the University but may be required to satisfy specified conditions or requirements, report regularly to a designated administrator, and be barred from holding any office or participating in any activity in which the student represents the University, including athletics or other competitive teams, or from participating in any University-recognized student organizations either within or outside the University community. The sanction of probation prohibits graduation until the period of probation has ended and the student has complied with all requirements.
- Other Actions: In addition to or in place of the above sanctions, the University may assign any other measures as deemed appropriate which may include the loss of privileges, deferred suspension, residential and campus bans, withholding or revoking a degree, restitution, educational program/project/class, housing relocation, housing termination, counseling referral, educational conversation with faculty or staff, fines, residence hall expulsion/eviction, community service, any other University sanctions, or any other appropriate measures.

Expulsion, permanent suspension, suspension for a definite or indefinite period, and probation may be noted on a student's transcript while the sanction is in effect.

ii) Employee Sanctions

The following are the common sanctions that may be imposed upon employees singly or in combination:

- Verbal or Written Warning
- Performance Improvement Plan/Management Process
- Enhanced Supervision, Observation, or Review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility

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⁷ A vice chancellor or the vice chancellor's delegate must make the final administrative determination in all suspension cases.

- Demotion
- Transfer
- Reassignment
- Delay of (or referral for delay of) Tenure Track Progress
- Assignment to New Supervisor
- Restriction of Stipends, Research, and/or Professional Development Resources
- Suspension/Administrative Leave with Pay
- Suspension/Administrative Leave without Pay
- Termination
- Other Actions: In addition to or in place of the above sanctions/responsive actions, the university may assign any other responsive actions as deemed appropriate.

iii) Remedies

When there has been a determination that the Respondent has violated the Policy, the University will consider appropriate remedies, based upon the findings and unique circumstances of each report. Remedies are measures taken to restore and preserve the Complainant's equal access to the University's educational programs, employment opportunities, or activities by addressing the effects of the conduct on the Complainant.

Remedies seek to restore to the Complainant, to the extent possible, all benefits and opportunities lost as a result of the Title IX Sexual Harassment. Remedies may include, but are not limited to, adjustment of work or class assignments, location, and/or schedule or recommending a review of a negative performance or grade decision that may have resulted from the conduct that violated the Policy. Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

The Title IX Coordinator will, in all cases, consider whether there is a need for additional or extended remedies. The Title IX Coordinator is responsible for effective implementation of any remedies.

K. Appeal Procedures

Both parties have the opportunity to appeal a determination regarding responsibility and a dismissal of a formal complaint or any allegations in the complaint to the appeal decision-maker(s) within five (5) business days of the issuance of the decision. Appeals are submitted by completing the online appeal form that will be included in any decision letter from the Hearing Officer.

If neither party requests an appeal within the five (5) business day timeline, any sanction will take effect immediately at the end of the five (5) business day appeal timeline.

Appeals are limited to 2,500 words, including attachments. Grounds for the appeal must be clearly and concisely stated, and all relevant information substantiating the grounds for appeal should be included.

The following constitute appropriate grounds for appeal:

- 1. the procedural irregularity that affected the outcome;
- 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; or
- 3. Title IX Coordinator, investigator, Hearing Officer, or decision-maker had a conflict of interest or bias for or against complainant or respondent generally or the individual complainant or respondent that affected the outcome of the matter.

Mere dissatisfaction with the hearing or dismissal outcome is not a valid basis for appeal. In addition, appeals are not intended to be a rehearing of the matter. The scope of the appeal will be limited to the grounds for appeal included in the written appeal submissions. In any request for an appeal, the burden of proof lies with the party requesting the appeal, because the outcome will be presumed to have been decided reasonably and appropriately.

If it is determined that the written appeal does not meet any of these criteria, the appeal will be denied without review by the appeal decision-maker(s). Once the appeal is filed, WSSU will provide written notice to the other party. If the appeal is determined to be properly filed, the other party will be given an opportunity to review and respond to the written appeal. Responses to written appeals are due five (5) business days after receipt of a copy of the appeal and are limited to 2,500 words.

If both parties have filed an appeal, the appeal documents from each party will be considered together in one appeal review process. Each party will be provided with the other party's appeal and may provide a response to the other party's written appeal. Responses to written appeals are due five (5) business days after receipt of a copy of the appeal and are limited to 2,500 words.

After reviewing all submitted materials, the appeal decision-maker(s) may: (1) affirm the outcome; (2) return the matter to the original or a new hearing decision-maker(s) with instructions to cure the procedural error, perceived conflict of interest/bias, or to consider the new evidence; (3) return the matter to the original or a new investigator with instructions to cure the procedural error, perceived conflict of interest/bias, or to consider the new evidence; (4) change the sanctions; or (5) overturn the dismissal.

All decisions are by majority vote and apply the preponderance of the evidence

standard. The outcome (including rationale for the result) of the appeal decision-maker(s) will be made in writing to both the complainant and respondent. All decisions by the appeal decision-maker(s) are final.

Separate from this Title IX resolution process, employees may have resolution processes available to them in certain circumstances set forth in state and UNC System human resources policies for certain employee classifications and should consult the relevant resolution policy:

15) Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed (i.e., not implemented) during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

16) Failure to Comply with Sanctions and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Hearing Officer).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, and expulsion/termination from the University. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

17) Withdrawal or Resignation Before Complaint Resolution

A. Students

Should a respondent decide not to participate in the Resolution Process, the process may proceed without their participation. Should a student Respondent permanently withdraw from WSSU, the Resolution Process typically ends with a dismissal, as WSSU has lost primary disciplinary jurisdiction over the withdrawn student. However, WSSU may continue the Resolution Process at the discretion of the Title IX Coordinator.

Regardless of whether the complaint is dismissed or pursued to completion of the Resolution Process, WSSU will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation The respondent who withdraws or leaves while the process is pending might not be able to return to WSSU in any capacity, if the Process is not completed. Admissions and Police may be notified, accordingly.

If the respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue and, if found in violation, that student is not permitted to return to WSSU unless and until all sanctions, if any, have been satisfied.

B. Employees

Should an employee Respondent resign with unresolved allegations pending, the Resolution Process typically ends with dismissal, as the University has lost primary disciplinary jurisdiction over the resigned employee. However, the University may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the matter is dismissed or pursued to completion of the Resolution Process, the University will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

The employee who resigns with unresolved allegations pending may not be eligible for academic admission or rehire with the University, and the records retained by the Title IX Coordinator will reflect that status.

Future inquiries regarding employment references for that individual may include that the former employee resigned during a pending disciplinary matter.

18) Informal Resolution Process (IRP)

The Resolution Process is WSSU's primary resolution approach unless Informal Resolution is elected by all parties and WSSU.

At the request of either the Complainant or Respondent in writing, the University may facilitate an Informal Resolution Process (IRP). The University has chosen to offer IRP as an option for parties to choose a resolution that is best for them, while still serving the safety and educational needs of the campus community. IRP may be requested any time prior to the Hearing Officer rendering an outcome letter.

The IRP process is voluntary, and both the Complainant and Respondent must consent in writing to participate in the IRP process. The University will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints.

The Title IX Coordinator will determine whether the request for IRP is appropriate for the particular Title IX complaint. The Title IX Coordinator may deny a request for IRP if the Title IX Coordinator determines that IRP would not be appropriate for the unique allegations and circumstances, even if both the complainant and respondent consent to the request.

WSSU does not offer or facilitate an IRP to resolves allegations that an employee sexually harassed a student. The Title IX Coordinator may facilitate the IRP or assign a facilitator as appropriate.

At any time prior to agreeing to a resolution in writing, the Title IX Coordinator has the right to end the IRP, and each party also has the right to withdraw from the IRP and resume the formal complaint process.

As a condition of engaging in Informal Resolution, the statements made, or evidence shared, during the Informal Resolution process will not be considered in the Formal Resolution Process unless all party's consent. The facilitator is prevented from participating in a formal resolution process as a witness (to share information about the parties' IRP), and as a Hearing Officer.

IRP may include a broad range of strategies, including but not limited to:

- *Supportive Resolution.* When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- *Alternative Resolution.* When the parties agree to resolve the matter through an alternative resolution mechanism including mediation, restorative practices, facilitated dialogue, facilitated agreement etc.
- Accepted Responsibility. When the Respondent accepts responsibility for violating policy, and desires to accept the recommended sanction(s) and end the Resolution Process.

Prior to implementing Informal Resolution, WSSU will provide the parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by WSSU.

WSSU maintains the right to reject any term or proposed term of the IRP agreement.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., referral for formal resolution, referral to the conduct process for failure to comply). The results or agreements resulting from an IRP are not appealable.

19) Public Notifications and Recordkeeping

The University will make publicly available on its website the following materials:

- Name and contact information of the Title IX Coordinator
- The Title IX Policy and these Procedures, and
- All materials used to train Title IX Coordinators, investigators, Hearing Officer, Appeals Decision-Makers, other decision-makers under this resolution process, and facilitators of informal resolutions.

The University will maintain for a minimum period of seven (7) years records of the following:

- Each Sexual Harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant;
- Any appeal and results of the appeal;
- Any informal resolution and results of that resolution; and
- All materials used to train Title IX Coordinators, investigators, Hearing Officer, Appeals Officers, other decision-makers under this resolution process, and facilitators of informal resolutions.

20) Revision of the Title IX Policy and these Procedures

The Title IX Policy and these procedures supersede any previous policies addressing Title IX Sexual Misconduct and Retaliation for incidents occurring on or after August 14, 2020, under Title IX and will be reviewed and updated annually by the Title IX Coordinator. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the Resolution Process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

If government laws or regulations change the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws or regulations.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws which frame such policies and codes, generally. In the event any provision of Title IX Policy and Procedures conflicts with applicable law, the law will supersede such provision.

Effective August 22, 2022 Amended: February 21, 2025