



# Sexual Misconduct Policy Governing Students and Employees

April 12, 2024

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## 1. INTRODUCTION

Wilmington University (“Wilmington” or “the University”) is committed to cultivating a diverse and inclusive community that recognizes the value of each individual and allows persons to learn and work in an environment free from harassment and discrimination. As part of this effort, the University will respond to sex-based harassment and discrimination through clear policies and grievance procedures, and commits itself to maintaining a safe and healthy educational and work environment via educational programming, employee training, and by sanctioning those who violate this policy. This comprehensive policy is created and implemented by the University to address allegations of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, in addition to other prohibited misconduct as identified and defined herein. This policy and the procedure herein apply to all students, employees, and third parties, including contractors and vendors of the University.

Wilmington University is a private postsecondary institution and an Equal Opportunity and Affirmative Action Employer with a strong institutional commitment to the achievement of excellence and diversity among its faculty and staff. Wilmington University does not discriminate against employees, students, or applicants on the basis on the basis of race, color, ethnicity, sex, age, gender, gender identity or expression, sexual orientation, religion, national origin, genetic information, disability, marital status, pregnancy, parenting or family responsibility status, veteran or military status, or any other characteristic protected by law with regard to any employment practices, including recruitment, advertising, job application procedures, hiring, upgrading, training, promotion, transfer, compensation, job assignments, benefits, and/or other terms, conditions or privileges of employment, provided the individual is qualified with or without reasonable accommodations to perform the essential functions of the job. Wilmington University's good faith efforts and policies ensure that this commitment is maintained. For complaints related to discrimination on the basis of any protected class besides sex, please contact the Human Resources Department and refer to the Title VII and Resolution Policy (herein the “Title VII Policy”). When an allegation of sex-based harassment and harassment or discrimination on the basis of another protected class is reported, the University will use this policy as well as the Title VII Policy to resolve the complaint. The University retains the right to conduct one investigation into all allegations and consolidate complaints. However, different procedures may be used to resolve complaints that allege more than one form of prohibited conduct. This is discussed further in sections throughout this document.

Wilmington University prohibits all forms of sex and gender-based harassment, as well as the offenses of sexual assault, domestic violence, dating violence, and stalking (collectively referred to in this policy as “Sexual Misconduct” and also constitutes “Prohibited Conduct” under this policy.) These offenses may also be prohibited by Title IX of the Higher Education Amendments of 1972, 20 U.S. C. § 1681 et seq. (“Title IX”), by the Clery Act and Section 304 of the Violence Against Women Reauthorization Act of 2013 (“VAWA”), Title VII of the Civil Rights Act of 1964, and other applicable statutes, to include Delaware H.B. 1. This policy prohibits a broad continuum of behaviors, some of which are not prohibited under Title IX or other laws. Their inclusion in this policy reflects the University’s standards and expectations for a respectful working and learning environment where everyone is free to work and learn safely. However,

complaints alleging discrimination based on pregnancy, different treatment based on sex, or other forms of discrimination do not fall under this policy but may still be addressed through either the Student Code of Conduct for complaints involving student respondents or the Employee Handbook, Title VII Policy, for complaints involving respondents who are employees.

The University will investigate and attempt to resolve all complaints of Prohibited Conduct<sup>1</sup> in a prompt, fair and impartial manner. The University will treat all individuals involved with dignity and respect. All processes are driven by objective fact-finding and approached from a neutral standpoint, including the presumption that a respondent is not responsible for a violation of this policy before a finding that supports that exists.

With this in mind, members of the University community are expected to conduct themselves in a manner that respects the inherent dignity of all people and refrains from any form of harassment or discriminatory practices, including all forms of Prohibited Conduct as defined in this policy. This policy has been developed to reaffirm these principles, provide explicit information regarding when and how the University responds to allegations of sex-based Prohibited Conduct, and offer accountability for conduct that violates this policy.

Inquiries regarding the application of this policy and the respective grievance procedures used to resolve complaints may be referred to the University's Title IX Coordinator, to the U.S. Department of Education's Office for Civil Rights, or both. Further, complaints regarding employment discrimination may also be referred to the Federal and state agencies noted further in this document.

## **1.1. DEFINITIONS**

### **1.1.1. COMPLAINANT**

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual misconduct.

### **1.1.2. RESPONDENT**

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

### **1.1.3. PARTY**

“Party” means either the Complainant(s) or Respondent(s) in an investigation or action relating to a report of Prohibited Conduct.

### **1.1.4. CONFIDENTIAL RESOURCES**

“Confidential Resources” are designated by the University to provide complainants with emergency and ongoing support and to advise the Complainant on options for reporting violations of this policy. Wilmington University does not have any on-campus confidential

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<sup>1</sup> Please see Section 2 for the offenses that constitute “Prohibited Conduct” under this policy.

resources. Persons seeking confidential resources should seek support off campus (see Off-Campus Resources chart on page 22).

#### **1.1.5. TITLE IX COORDINATOR**

The “Title IX Coordinator” is responsible for overseeing the University’s response to reports of Sexual Misconduct on campus and oversees the University’s centralized response to ensure compliance with Title IX and the Clery Act (VAWA) as it relates to the accurate reporting of and response to sexual harassment and the VAWA offenses. The Title IX Coordinator is also responsible for coordinating the effective implementation of supportive measures and remedies. The Title IX Coordinator or the University President may delegate responsibilities under this policy to a designee, who will be appropriately trained per the requirements of Title IX and VAWA. For purposes of this policy, any reference to the Title IX Coordinator should be read as the “Title IX Coordinator or other designee.”

#### **How to contact the University’s Title IX Coordinator:**

Linda Andrzejewski, Ed.D.  
Executive Director & Title IX Coordinator  
47 Reads Way  
New Castle, DE 19720  
[linda.m.andrzejewski@wilmu.edu](mailto:linda.m.andrzejewski@wilmu.edu)  
Phone: (302) 356-6754  
Fax: (302) 328-7918

In-person reports may be made weekdays between 9 a.m. and 5 p.m. Email reports can be sent anytime: 24 hours a day/7 days a week. You may also mail written correspondence to the address above.

#### **1.1.6. INVESTIGATOR**

The “Investigator” is the person assigned to conduct the investigation upon the signing of a complaint and a request for a formal resolution process. The Investigator may be a Title IX Coordinator, an employee, or a contracted service provider.

#### **1.1.7. DECISION-MAKER**

The “Decision-Maker” is the person or persons who will make the determination of responsibility for Emergency Removal and after an informal or formal resolution process or following an appeal. The Decision-Maker will provide the determination in writing and cannot be the same person as the Title IX Coordinator or the Investigator on a case arising out of the same facts or circumstances. In the case of an appeal, the Decision-Maker will be different from the person(s) who made the initial determination. The Decision-Maker may be an employee or a contracted service provider. The University retains the right to establish a pool of cross-trained individuals who may serve as an Investigator or one of the Decision-Makers; however, they would never hold more than one position during a particular complaint.

#### **1.1.8. TITLE IX PERSONNEL**

“Title IX Personnel” include all individuals whose duties involve resolution of reports and complaints of student and employee violations of this policy. All Title IX personnel shall receive annual training as required by Title IX, VAWA and Delaware law. Employees falling under this description include, without limitation, the Title IX Coordinator(s), Investigators, Decision-Makers, members of University Safety, and any contracted service providers of the University with any of the responsibilities outlined herein.

### **1.1.9. RESPONSIBLE EMPLOYEES**

With limited exceptions, every University employee must report conduct that could constitute sexual harassment, sex discrimination, and sexual misconduct under this policy and are considered “Responsible Employees.”<sup>2</sup> A Responsible Employee includes supervisors, managers, coaches, and faculty members with administrative or student supervisory duties who are responsible for taking all appropriate action to prevent sexual misconduct, discrimination and harassment and to correct it when it occurs. They must report it to the institution’s Title IX Coordinator promptly.

Delaware state law requires Responsible Employees of higher education institutions to additionally offer assistance to victims who wish to report incidents of sexual assault perpetrated by or against a student to law enforcement authorities or University Safety officials serving the institution. Responsible Employees are also responsible for informing victims of their rights under the Victims’ Bill of Rights in Chapter 11, as well as available confidential medical, counseling, and advocacy services. University Safety constables shall make reasonable efforts to ensure a victim's privacy when contacting them, and are required to inform the victim of their rights under the Victims’ Bill of Rights, as well as available confidential medical, counseling, and advocacy services. A report to a faculty or staff member of the University does not result in a complaint for the purpose of initiating an investigation or informal or formal resolution processes; however, the reporting of that information by the Responsible Employee to the institution’s Title IX Coordinator is required by Delaware law.

Delaware has both civil and criminal laws to protect children from abuse and neglect. All University employees are mandatory reporters of Child Abuse under Chapter 9 of Title 16 of the Delaware Code. All suspected child abuse and neglect must be reported<sup>3</sup> to the 24-hour Division of Family Services (DFS) Child Abuse and Neglect Report line at 1-800-292-9582. You may also call any Law Enforcement Agency or 911, but not instead of contacting DFS. You are not required to provide proof. Anyone who makes a good faith report based on reasonable grounds is immune from prosecution. DFS provides information to the community on identifying signs of abuse, which may be accessed [here](#). This means that all employees must immediately report whenever they suspect that a child has been abused or neglected. Reports may also be made online at the [Delaware Division of Family Services Reporter Portal](#).

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<sup>2</sup> Delaware H.B. utilizes the term “Responsible Employee” when referring to employees who have a duty to report incidents of sexual misconduct. Although that term is no longer used by the U.S. Department of Education for purposes of Title IX compliance, Wilmington is deferring to the state terminology to meet compliance with both laws.

<sup>3</sup> Please additionally see Wilmington University’s Minors on Campus Policy at the rear of this document.



#### **1.1.10. ADVISOR OF CHOICE**

An “Advisor of Choice” means the person of the Complainant or Respondent’s choosing who accompanies them to any meeting, interview, or disciplinary proceeding in which they must be present. This person can provide support, advice or counsel. During the investigatory stage of the process, the Advisor is not permitted to act on behalf of their Party with regard to answering questions or providing evidence on behalf of a Party. They may not actively participate or be disruptive, nor may they unnecessarily delay the investigation due to their personal availability. During the Live Hearing portion of the Title IX process, the Advisor of Choice is responsible for conducting the cross-examination during a live hearing pursuant to the Title IX grievance processes. Cross-examination in this setting is limited to the other Party and witnesses. The Advisor cannot make opening or closing statements, ask questions of their own advisees, object to questions, or engage in advocacy other than that stated herein. An Advisor is permitted to participate in a Non-Title IX grievance process; however, their role is restricted to the investigatory stage as described above.

For both Title IX and Non-Title IX meetings, interviews, and disciplinary proceedings, the Advisor may talk quietly with the student or pass notes in a non-disruptive manner. In addition, while Advisors may provide guidance and assistance throughout the process, all written submissions must be authored by the student. Please note: The Non-Title IX grievance process for employees does not allow advisors to be present at any interview, meeting, or discipline proceeding.

Wilmington University will not restrict the choice of an Advisor, and the Advisor can be anyone of the Party’s choosing. However, the University may remove Advisors if they become disruptive or hinder a fair and equitable process. The involvement of an Advisor may not result in undue delay of any meeting or proceeding. During the Title IX live hearing for the Title IX grievance procedures, if a Party does not have an Advisor, the University will appoint one on behalf of the Party free of charge. In this capacity, the Advisor will be appointed for the sole purpose of conducting cross-examination of the other Party and witnesses. Employees of the University are not permitted to serve as Advisors of choice.

#### **1.1.11. CAMPUS SECURITY AUTHORITY (CSA)**

A “Campus Security Authority” (“CSA”) is a designated University official who has an obligation to report certain crimes reported to them to the reporting structure of the institution as required by the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). In most cases, a CSA can fulfill their responsibilities while still maintaining victim confidentiality. Except in reference to a report to the Title IX Coordinator, a report to a CSA does not result in a complaint for the purpose of triggering an investigation or informal or formal resolution process.

### **1.1.12. SCOPE AND JURISDICTION**

This policy governs the conduct of University students, regardless of enrollment status, faculty, staff, and third parties (i.e., non-members of the University community, including vendors, alumni, visitors, or local residents).

Third Parties are both protected by and subject to this policy. A third party may report of a suspected violation of this policy committed by a member of the University community. A third-party may also be permanently restricted from the University or subject to other restrictions for failing to comply with this policy.

This policy applies to conduct that occurs on University property (on campus) and in the local vicinity. This policy also applies to conduct that occurs off University property (off campus) when the conduct is associated with a University-sponsored program or activity, such as travel, research, internship programs, or when such conduct has a continuing adverse effect or creates a hostile environment on campus. Judgments about these matters will depend on the facts of individual cases.

All actions by a member of the University community that involve the use of the University's computing and network resources from a remote location, digital platforms, and computer hardware or software owned and operated by, or used in the operations of the University, including but not limited to accessing email accounts, will be deemed to have occurred on campus. Online and/or social media conduct may violate this policy if it meets the definition of Prohibited Conduct. Online postings are in the public sphere and are not private. These postings may subject an individual to allegations of Sexual Misconduct or other misconduct. The University does not regularly search for this information, nor does it monitor any particular social media site. Still, we may take action if and when such information is brought to our attention. See the [University's Policy on Computer Use](#) for a list of unacceptable behavior/use of University computing resources. The University will view any report of online Sexual Misconduct with the Respondent's free speech rights in mind.

Individuals are encouraged to report any violation of this policy as soon as possible to maximize the University's ability to respond promptly and effectively. Reports and complaints may be made at any time without regard to how much time has elapsed since the incident(s) in question have occurred.

If the Respondent is no longer a student or employee at the time of the report or complaint, the University may not be able to take disciplinary action against the Respondent. However, it will still seek to meet its Title IX or other legal obligations by offering supportive measures for the Complainant and taking steps, if necessary and possible, to end the prohibited behavior, prevent its recurrence, and address its effects.

For Title IX to apply, the incident must be reported while the all parties are associated with the University (as current students or employees) and must have occurred on property owned or controlled by the University in the United States. Additionally, during the time the misconduct is

reported to have occurred, the University must have had substantial control of the Respondent and the context of the misconduct.

### **1.1.13. SEXUAL MISCONDUCT AT WILMINGTON UNIVERSITY AND TITLE IX**

This policy governs Prohibited Conduct that constitutes sex-based harassment. However, the government defines sexual harassment differently in specific settings. Additionally, this policy covers behaviors that fall outside of the jurisdiction required for response by Title IX. The University will determine whether an allegation should proceed utilizing the grievance processes mandated by Title IX or the University's grievance process for Non-Title IX Sexual Misconduct, based on the constellation of facts and circumstances surrounding the report or complaint and the following factors:

- a. applicable law
- b. what is reported to have occurred
- c. the status of the Complainant as student, employee, or third-party
- d. the status of the Respondent as student, employee, or third-party
- e. the context in which the harassing behavior is reported to have occurred
- f. whether or not the reported behavior occurred within the United States; and/or
- g. whether there are continuing effects of such reported behavior on campus or within the University's educational programs or associated activities

**The Title IX Coordinator is the University official designated to evaluate reports to determine which law(s) attach, what threshold each law holds under the various laws, and which grievance process to utilize to resolve such reported behavior.**

As stated above, complaints alleging discrimination based on pregnancy, different treatment based on sex, or other forms of sex discrimination will be adjudicated under the Student Code of Conduct for Student-based complaints and the Employee Handbook, Title VII Policy and Resolution Procedures, for complaints involving employees.

## **2. PROHIBITED CONDUCT**

As outlined above, the University prohibits behaviors outside the scope of conduct prohibited by Title IX. If a report constitutes behavior as described below, the University will determine which grievance process is needed to resolve the complaint.

For purposes of this policy, all of the following definitions constitute conduct to be based of sex. The University will treat attempts to commit any sexual misconduct as if those attempts were completed.

### **2.1. DEFINITIONS OF PROHIBITED CONDUCT**

#### **2.1.1. QUID PRO QUO SEXUAL HARASSMENT**

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to or rejection of such conduct is made implicitly or explicitly a term or condition of instruction, employment, or participation in any University activity or benefit; or
- Submission to or rejection of these behaviors by an individual is used as a basis for evaluation in making academic or personnel decisions.

To reach the threshold for a claim under Title IX, the person conditioning the provision of the aid, benefit, or service must be an employee.<sup>4</sup>

### **2.1.2. HOSTILE ENVIRONMENT SEXUAL HARASSMENT**

Any unwelcome sexual advance, request for sexual favors, or other unwelcome verbal, electronic or physical conduct of a sexual nature when such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance; i.e. it is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, or social environment under both a subjective and an objective standard.

Gender-based harassment is a form of sexual harassment that includes verbal, written, or physical behavior, directed at someone, or against a particular group, because of that person's or group's sex, gender identity, actual or perceived sexual orientation, or based on gender stereotypes, when that behavior is unwelcome and has the purpose or effect of substantially interfering with the individual's work or educational performance by creating an intimidating, hostile, or demeaning environment for employment, education or associated University activities of the University.

Such conduct does not need to be directed at or to a specific individual in order to constitute sexual harassment, but may consist of generalized unwelcome and inappropriate behaviors or communications based on sex, gender identity, actual or perceived sexual orientation, or gender stereotypes. Determination of whether alleged conduct constitutes sexual harassment requires consideration of all the circumstances, including the context in which the alleged incidents occurred.

To reach the threshold for a claim under Title IX, the conduct must be determined to be unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity as well as meet the required jurisdictional elements.

An evaluation of when an offense meets the definition for Title IX will be determined by the Title IX Coordinator based on the constellation of facts and circumstances surrounding the report or Complaint.

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<sup>4</sup> For purposes of this policy, "volunteers" do not constitute "employees" with regard to allegations of sexual harassment for purposes of Title IX. Complaints alleging "volunteers" committed acts of prohibited conduct will be resolved utilizing the institution's Non-Title IX grievance process.

### **2.1.3. NON-CONSENSUAL SEXUAL PENETRATION**

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 the consent of the victim.

### **2.1.4. NON-CONSENSUAL SEXUAL CONTACT**

The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity. Private body parts for purposes of this policy are breast, buttocks, and groin.<sup>5</sup>

### **2.1.5. INCEST**

For purposes of this policy, incest means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. In Delaware, this includes sexual contact between persons who are brothers and sisters, parents, and children, including stepparents, stepchildren, and adopted persons, as well as aunts/uncles with nieces/nephews and between grandparents and grandchildren.<sup>6</sup>

### **2.1.6. STATUTORY RAPE**

Sexual intercourse with a person who is under the statutory age of consent, which in Delaware is 16 years of age.<sup>7</sup>

### **2.1.7. DOMESTIC VIOLENCE**

A felony or misdemeanor crime of violence committed by

- a current or former spouse or intimate partner of the victim
- a person with whom the victim shares a child in common.
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred
- any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

According to Section 16 of Title 18 of the United States Code, the term "crime of violence" means:

- an offense under Delaware State law or New Jersey state law (depending on where the incident reportedly occurred) that has as an element the use, attempted

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<sup>5</sup> The touching of non-private body parts could constitute "Sexual Harassment". See Sections 2.1.1 and 2.1.2 of this policy.

<sup>6</sup> See Delaware Code Title 11 and Criminal Procedure § 766.

<sup>7</sup> See Delaware Code Title 11 and Criminal Procedure § 770. As an aside, Delaware law states that in some situations, a person must be at least 18 years of age to engage in consensual, lawful activity.

use, or threatened use of physical force against the person or property of another, or

- any other offense that is a felony in Delaware or New Jersey (depending on where the incident is reported to have occurred) and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Domestic violence<sup>8</sup>, as defined by Title IX, is considered relationship violence and must be “on the basis of sex.” For purposes of this policy, Domestic Violence does not include acts that meet the definition of domestic violence under Delaware and New Jersey laws that are based solely on cohabitation (e.g. roommates) or family relationship (e.g. parent/child). While non-relationship violence would not be addressed using this policy, it could still be counted for purposes of Clery Act reporting and may be addressed under other University policies or grievance procedures. If you need information on how to obtain a Protection from Abuse Order in the State of Delaware, please visit <https://courts.delaware.gov/family/pfa/index.aspx>. If you need information on how to obtain a Protection from Abuse Order in New Jersey, visit <https://www.njsp.org/division/operations/domestic-violence-info.shtml>

#### **2.1.8. DATING VIOLENCE**

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party’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.<sup>9</sup>

#### **2.1.9. STALKING**

Stalking<sup>10</sup> is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others; or suffer substantial emotional distress.

- i. *For the purposes of this definition—*
  - A. *Course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third Parties, by any action, method,*

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<sup>8</sup> Delaware Criminal Code does not delineate Domestic Violence as a specific statute but defines such acts for the appropriate jurisdiction for prosecutorial action: 'Domestic violence' means abuse perpetrated by one member against another member of the following protected classes: Family, as that term is defined in 10 Del. C. §901(9), regardless, however, of state of residence of the parties; Former spouses, a man and a woman cohabitating together with or without a child of either or both, or a man and a woman living separate and apart with a child in common.

<sup>9</sup> Delaware has no separate statute for dating violence, but a definition for “teen dating violence: Delaware Criminal Code defines Dating Violence in the School Teen Dating Violence and Sexual Assault Act, Title14, Section 4112E(a)(2) as: "Teen dating violence". — As used in this section, "teen dating violence" means assaultive, threatening or controlling behavior, including stalking as defined in § 1312 of Title 11, that 1 person uses against another person in order to gain or maintain power or control in a current or past relationship. The behavior can occur in both heterosexual and same sex relationships, and in serious or casual relationships.

<sup>10</sup> See Delaware Code Title 11 and Criminal Procedure § 1311 and § 1312.

*device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.*

- B. *Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.*

*Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.*

To reach the threshold for a claim under Title IX, the stalking behavior must be determined to be based on sex. Non-sex-based stalking complaints will be resolved using this policy's definitions but under the Non-Title IX Resolution Procedures by status of the Respondent as Student or Employee.

#### **2.1.10. SEXUAL EXPLOITATION**

Any act whereby one person violates the sexual privacy of another or takes unjust or abusive sexual advantage of another who has not provided consent, and that does not constitute another offense as defined above. Examples may include acts such as recording, photographing, streaming or otherwise transmitting, viewing or distributing intimate or sexual images or sexual information without the knowledge and consent of all parties involved; voyeurism (i.e., spying on others who are in intimate or sexual situations), knowingly transmitting a sexually transmitted infection to another, or facilitation the sexual harm/abuse of another person. Sexual exploitation, when it does not in and of itself constitute sexual harassment, will be resolved using the University's Non-Title IX grievance process.

#### **2.1.11. RETALIATION**

Retaliation is any attempt to seek retribution against an individual or group of individuals involved in making a good faith report, filing a complaint, participating in a disciplinary process, or opposing in a reasonable manner an action believed to constitute a violation of this policy. Retaliation can take many forms, including abuse or violence, threats, coercion, and intimidation. Actions in response to a good faith report or response under this policy are considered retaliatory if they have a materially adverse effect on the working, academic or University controlled living environment of an individual or if they hinder or prevent the individual from effectively carrying out their University responsibilities. Any individual or group of individuals can engage in retaliation and will be held accountable under this policy.

Allegations of Retaliation will proceed under Student Conduct or the Employee Handbook, Title VII policy depending on the status of the Respondent as student or employee.

## **2.2. DEFINITION OF CONSENT**

Voluntary, informed, un-coerced agreement through words and/or actions freely given, which a reasonable person would interpret as a willingness to participate in mutually agreed-upon sexual acts. Consensual sexual activity happens when each partner willingly and affirmatively chooses to participate.

Indications that consent is not present include:

- When physical force is used or there is a reasonable belief of the threat of physical force, including when one person overcomes the physical limitations of another person.
- When coercion is present. Coercion means the improper use of pressure to compel another individual to initiate or continue sexual activity against the individual's will. Coercion may include intimidation, manipulation, and/or blackmail. Words or conduct may constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether to engage in sexual activity.
- When a person is incapable of making an intentional decision to participate in a sexual act, which could include instances in which the person is in a state of incapacitation, which could be permanent or temporary. Evaluations of capacity will be viewed in hindsight using a reasonable person standard.

Important points regarding consent include:

- Consent to one act does not constitute consent to another act.
- Consent on a prior occasion does not constitute consent on a subsequent occasion.
- The existence of a prior or current relationship does not, in itself, constitute consent.
- Consent can be withdrawn or modified at any time.
- Consent is not implicit in a person's manner of dress.
- Accepting a meal, a gift, or an invitation for a date does not imply or constitute consent.
- A person's lack of verbal or physical resistance or submission resulting from the use or threat of force does not constitute consent.
- Silence and passivity do not necessarily constitute consent.
- Initiation by someone who a reasonable person knows or should have known to be deemed incapacitated is not consent.
- A person's consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another.

A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances, including without limitation when a person is incapacitated or not of legal age.

A person who is asleep or unconscious is considered incapacitated and unable to consent. Additionally, a person may be incapacitated due to a temporary or permanent mental or physical disability.

In the context of this policy, incapacitation is the state in which a person's perception or judgment is so impaired that they lack the cognitive capacity to make or act on conscious decisions. The use of drugs or alcohol can cause incapacitation, which is a state beyond mere intoxication. An individual who is incapacitated is unable to consent to a sexual activity. Engaging in sexual activity with an individual who is incapacitated (and therefore unable to consent), where a person knows or ought reasonably to have understood that the individual is incapacitated, constitutes Sexual Misconduct and is a violation of this Policy.



### 3. REPORTING

Any person may report an incident of Sexual Misconduct as defined by this policy however Employees must report. The University encourages anyone who experiences or becomes aware of Sexual Misconduct to immediately contact one of the options listed below including law enforcement, school administrators and off campus confidential options. Reports may be made by the person who experienced the Sexual Misconduct or by a third-party, including, but not limited to, a friend, family member, advisor, or faculty member. Reports to the Title IX Coordinator may be made in person, by mail, by telephone, or by electronic mail, using the contact information listed below, 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 at any time (including during non-business hours) by using the listed telephone number or electronic mail address, or by physical mail to the office address.

A Complainant may pursue some or all of these reporting options at the same time (e.g., one may simultaneously pursue a Formal Resolution Process with the University and a criminal complaint). When initiating any report, a Complainant does not need to know whether they wish to request any particular course of action, nor how to label what happened. Before or during any grievance process, Complainants and other reporting persons are encouraged to consult a Confidential Resource.

#### 3.1 CONFIDENTIAL REPORTING OPTIONS

No offices on campus are designated as Confidential Resources. Therefore, an individual who is not prepared to make a report, or who may be unsure how to label what happened, but still seeks information and support, is strongly encouraged to contact an off campus Confidential Resource.

Other campus resources that may be helpful (Private, but not confidential)

Visa & Immigration Assistance	International Affairs	Director International Affairs 302-327-4791 320 N. DuPont Hwy., Pratt Building New Castle, DE 19720
Health	No Campus Resource-See Off Campus Resources	
Mental Health	No Campus Resource-See Off Campus Resources	
Counseling	No Campus Resource-See Off Campus Resources	
Victim Advocacy	No Campus Resource-See Off Campus Resources	
Legal Assistance	No Campus Resource-See Off Campus Resources	
Financial Aid	Financial Aid Department	Director of Financial Aid 302-356-6982 320 N. DuPont Hwy., New Castle, DE 19720

Title IX Coordinator	Human Resources Department	Dr. Linda Andrzejewski, Title IX Coordinator 302-356-6754 47 Reads Way Rm #440 New Castle, DE 19270
Campus Law Enforcement	University Safety	Safety Supervisor 302-356-6704 320 N. DuPont Hwy., Alumni Building New Castle, DE 19270

**3.2 LAW ENFORCEMENT AND UNIVERSITY SAFETY**

Emergency medical assistance and campus safety/law enforcement assistance are available both on and off campus. Individuals are encouraged to contact law enforcement and seek medical treatment as soon as possible following an incident that poses a threat to safety or physical well-being or following a potential criminal offense.

At the Complainant’s request, the Title IX Coordinator will assist the Complainant in contacting campus and/or local law enforcement and will cooperate within the extent permitted by law with law enforcement agencies if a Complainant decides to pursue the criminal process.

**Immediate Health and Safety: Contact the Wilmington University Safety Department or dial 9-1-1**

Wilmington University Safety Department personnel may be contacted at the New Castle, Wilson Graduate Center, Dover, Brandywine, Middletown, and Athletics Complex sites at the following numbers:

**NEW CASTLE CAMPUS (302) 325-3333**  
**WILSON GRADUATE CENTER (302) 325-3333**  
**DOVER (302) 325-3333**  
**ATHLETICS COMPLEX (302) 325-3333**  
**BRANDYWINE (302) 325-3333**

**Persons who wish to report crimes or other incidents at other university sites should contact the police department of jurisdiction by calling 911.**

Students may also contact University Safety by the following means:

- » **Gray emergency phones**–Gray emergency phone boxes are available at most building entrances at the New Castle, Wilson Graduate Center, Dover, Brandywine and Athletics Complex sites. To reach the Department of University Safety officer on duty lift the receiver and stay on the line until the officer answers.
- » **Internal emergency phones**– Internal emergency phones are available at several locations on the New Castle, Wilson Graduate Center, Dover, Brandywine and Athletics Complex sites. Internal emergency phones are located on building interiors. To reach the Department of University Safety officer on duty lift the receiver and stay on the line.
- » **Code Blue phones**–Code Blue phones are located in parking lots at the New Castle, Wilson Graduate Center, Dover, Brandywine, and Athletics Complex sites. Code Blue phones are distinguishable by a bright blue light attached to a pole which identifies the location of these telephones. To activate a Code Blue phone simply hit the touch pad and wait for the officer on duty to respond.

**Local Law Enforcement: Emergency Contact Information**

<b>SITE</b>		<b>EMERGENCY CONTACT INFORMATION</b>
<b>NEWCASTLE CAMPUS</b>		
POLICE/FIRE/AMBULANCE RESPONSE		
FROM A UNIVERSITY TELEPHONE	911 or 302.834.2620	
FROM A NON-UNIVERSITY TELEPHONE	911 or 302.834.2620	
FOR WILMINGTON UNIVERSITY DEPARTMENT OF UNIVERSITY SAFETY RESPONSE		
FROM A UNIVERSITY TELEPHONE (24 HOURS)	302.325.3333	
FROM A NON-UNIVERSITY TELEPHONE (24 HOURS)	302.325.3333	

<b>WILSON GRADUATE CENTER CAMPUS</b>		
POLICE/FIRE/AMBULANCE RESPONSE		
FROM A UNIVERSITY TELEPHONE	911 or 302.573.2800	
FROM A NON-UNIVERSITY TELEPHONE	911 or 302.573.2800	
FOR WILMINGTON UNIVERSITY DEPARTMENT OF UNIVERSITY SAFETY RESPONSE		
FROM A UNIVERSITY TELEPHONE (24 HOURS)	302.325.3333	
FROM A NON-UNIVERSITY TELEPHONE (24 HOURS)	302.325.3333	

<b>DOVER CAMPUS</b>		
POLICE/FIRE/AMBULANCE RESPONSE		
FROM A UNIVERSITY TELEPHONE	911 or 302.736.7111	
FROM A NON-UNIVERSITY TELEPHONE	911 or 302.736.7111	
FOR WILMINGTON UNIVERSITY DEPARTMENT OF UNIVERSITY SAFETY RESPONSE		
FROM A UNIVERSITY TELEPHONE (24 HOURS)	302.325.3333	
FROM A NON-UNIVERSITY TELEPHONE (24 HOURS)	302.325.3333	

<b>DOVER AIR FORCE BASE</b>		
POLICE/FIRE/AMBULANCE RESPONSE		
FROM A UNIVERSITY TELEPHONE	911	
FROM A NON-UNIVERSITY TELEPHONE	911	
DAFB SECURITY POLICE (24 HOURS)	302.677.6666	

<b>SITE</b>		<b>EMERGENCY CONTACT INFORMATION</b>
<b>GEORGETOWN (DELAWARE TECHNICAL COMMUNITY COLLEGE)</b>		

POLICE/FIRE/AMBULANCE RESPONSE	
FROM A UNIVERSITY TELEPHONE	911 or 302.736.7111
FROM A NON-UNIVERSITY TELEPHONE	911 or 302.736.7111
TO CONTACT DELAWARE TECHNICAL COMMUNITY COLLEGE SAFETY DEPARTMENT	
OWENS CAMPUS, GEORGETOWN	302.856.6613

<b>BRANDYWINE CAMPUS</b>	
POLICE/FIRE/AMBULANCE RESPONSE	
FROM A UNIVERSITY TELEPHONE	911 or 302.761.6677
FROM A NON-UNIVERSITY TELEPHONE	911 or 302.761.6677
SECURITY OFFICER (24 HOURS)	302.325.3333

<b>CAMDEN COUNTY COLLEGE—BLACKWOOD CAMPUS (NEW JERSEY)</b>	
POLICE/FIRE/AMBULANCE RESPONSE	
FROM A UNIVERSITY TELEPHONE	911
FROM A NON-UNIVERSITY TELEPHONE	911
CAMPUS SECURITY (8:00 AM–10:00 PM)	856.347-5089

<b>CAMDEN COUNTY COLLEGE—CAMDEN CITY (NEW JERSEY)</b>	
POLICE/FIRE/AMBULANCE RESPONSE	
FROM A UNIVERSITY TELEPHONE	911
FROM A NON-UNIVERSITY TELEPHONE	911
CAMPUS SECURITY (8:00 AM–10:00 PM)	856.347.5089

<b>MERCER COUNTY COMMUNITY COLLEGE—JAMES KERNEY SITE (NEW JERSEY)</b>	
POLICE/FIRE/AMBULANCE RESPONSE	
FROM A UNIVERSITY TELEPHONE	9-911
FROM A NON-UNIVERSITY TELEPHONE	9-911
CAMPUS SECURITY (8:00 AM–10:00 PM)	609-570-3175

<b>MT. LAUREL (BURLINGTON COUNTY COLLEGE—NEW JERSEY)</b>	
POLICE/FIRE/AMBULANCE RESPONSE	
FROM A UNIVERSITY TELEPHONE	8-911
FROM A NON-UNIVERSITY TELEPHONE	911
TO CONTACT BC PUBLIC SAFETY (24 HOURS)	856.222.9311 ext. 2100 or (856).434.7233 (SAFE)

SITE	EMERGENCY CONTACT INFORMATION	
<b>PEMBERTON (BURLINGTON COUNTY COLLEGE—NEW JERSEY)</b>		
POLICE/FIRE/AMBULANCE RESPONSE		
FROM A UNIVERSITY TELEPHONE		<b>9-911</b>
FROM A NON-UNIVERSITY TELEPHONE		<b>911</b>
TO CONTACT BC PUBLIC SAFETY (24 HOURS)		<b>609.894.9311 ext. 1100</b>
<b>CUMBERLAND COUNTY COLLEGE (NEW JERSEY)</b>		
POLICE/FIRE/AMBULANCE RESPONSE		
FROM A UNIVERSITY TELEPHONE		<b>9-911</b>
FROM A NON-UNIVERSITY TELEPHONE		<b>911</b>
TO CONTACT CUMBERLAND COUNTY COLLEGE OFFICE OF SAFETY AND SECURITY		
FROM CAMPUS TELEPHONE		<b>1777</b>
FROM A NON-CAMPUS TELEPHONE (24 HOURS)		<b>856.200.4706 or 856.691.8600</b>
<b>ROWAN COLLEGE AT GLOUCESTER COUNTY</b>		
POLICE/FIRE/AMBULANCE RESPONSE		
FROM A UNIVERSITY TELEPHONE		<b>9-911</b>
FROM A NON-UNIVERSITY TELEPHONE		<b>911</b>
SECURITY OFFICER (Monday – Friday, 7am-11pm)		<b>4444</b>
SHERRIFF’ S OFFICE ON CAMPUS (24 HOURS) HOURS–24/7		<b>856-415-2200</b>
DEPTFORD POLICE DEPARTMENT (24 HOURS)		<b>856.845.2220</b>
<b>JOINT BASE MCGUIRE-DIX-LAKEHURST (NEW JERSEY)</b>		
POLICE/FIRE/AMBULANCE RESPONSE		
FROM A UNIVERSITY TELEPHONE		<b>911</b>
FROM A NON-UNIVERSITY TELEPHONE		<b>911</b>
NORTH HANOVER POLICE DEPARTMENT (24		<b>609.758.2522 ext. 223/227</b>

### 3.3 TITLE IX COORDINATOR

Any individual who may have been subjected to a violation of this policy, and who is considering making a complaint under this policy, is encouraged to contact the Title IX Coordinator.

In light of the University’s obligation to make reasonable efforts to investigate and address conduct prohibited by this policy, University community members who are not designated Confidential Resources may be required to notify the Title IX Coordinator or the University

Safety Department of suspected violations, and cannot guarantee the confidentiality of a report under this policy.

The Title IX Coordinator will be informed of all reports of potential violations of this policy.

**Title IX Coordinator:**

To report any form of sexual misconduct, contact the University’s Title IX Coordinator, Linda Van Drie Andrzejewski, Ed.D., Executive Director of Title IX, Clery, and Regulatory Affairs, Administrative and Legal Affairs, Wilmington University in person by visiting her campus office at: Wilson Graduate Center, 47 Reads Way, New Castle, DE 19720, in writing by email: linda.m.andrzejewski@wilmu.edu or by calling 302-356-6754.

Reports may be made in person between 9am and 5pm M-F and anytime 24 hours a day/7 day a week via email or by sending written correspondenc.

**3.4 OTHER AVAILABLE RESOURCES**

Any individual may also access resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention, and assistance in interfacing with the criminal justice system. If accessing these resources, individuals are encouraged to clarify whether the resources are confidential.

**Medical Resources**

**Forensic Medical Exams and Physical Health Services**

After an incident of sexual assault or domestic violence, the victim should strongly consider seeking medical attention as soon as possible at the closest emergency room. In various states in the United States, evidence may be collected even if you chose not to make a report to law enforcement. In all states, victims may seek medical treatment for sexual assault without any associated financial obligation, regardless of their reporting decision.

In circumstances of sexual assault, if a complainant does not opt for forensic evidence collection, health care providers still can treat injuries and take steps to address concerns of pregnancy and/or sexually transmitted infection. It is important that a survivor of sexual assault not bathe, douche, smoke, change clothing or clean the bed/linen/area where they were assaulted within 120 hours after the incident occurred so that evidence may be preserved. Complainants of sexual assault, domestic violence, dating violence, or stalking also are encouraged to preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents, if any exist that may be useful to University investigators, University Safety personnel, or local police.

*In the chart below, please find the contact information for the hospitals closest to each campus as well as an indication as to whether or not the hospital offers Sexual Assault Nurse Examiner/Forensic Nurse Examiners (SANE/FNE nurse) services. SANE/FNE nurses are trained medical professionals who are sensitive and specialize in the care of crime victims. SANE/FNE nurses are able to collect forensic evidence from the bodies of victims of sexual and*

domestic assault. They also routinely work with law enforcement to preserve the evidence and may testify in court. If you have difficulty locating the closest hospital with evidence collecting capabilities, contact 9-1-1 and ask for help in locating a hospital with a SANE or FNE nurse. You may also contact the National Sexual Assault Hotline at 800-656-HOPE (4673) or visit the Rape, Abuse and Incest National Network at [www.RAINN.org](http://www.RAINN.org).

State	Hospital	Address	Telephone Number	State
<b>Delaware</b>  Victims in DE may apply to DE Victim's Compensation Assistance Program for financial assistance by calling 302-255-1770	Christiana Care	4755 Ogletown-Stanton Road, Newark, DE 19718	302-733-1000	Yes*** Forensic Nurse Examiners are on site, 302-733-4799, police involvement not required***
	Bayhealth Medical System – Kent General Hospital	640 South State Street Dover, Delaware 19901	302-674-4700	Yes*** Forensic Nurse Examiners are on site, police involvement not required***
	Bayhealth Medical System – Milford Memorial Hospital	21 West Clarke Avenue Milford, Delaware 19963	302-422-3311	Yes*** Forensic Nurse Examiners are on site, police involvement not required*** Please ask to connect to Kent General Hospital.
	Beebe Medical Center	424 Savannah Rd. Lewes, DE 19958	302-645-3300	Yes*** Forensic Nurse Examiners are on site, police involvement not required***
<b>New Jersey</b>	Virtua Memorial Hospital, Mt. Holly	175 Madison Ave., Mt. Holly, NJ 08060	609-914-6000	Yes*** Forensic Nurse Examiners are on site, police involvement not required***
	Virtua Marlton	90 Brick Road Marlton, NJ 08053	856-355-6000	Yes*** Forensic Nurse Examiners are on site, police involvement not required***

New Jersey	Lourdes Medical Center, Willingboro	218 Sunset RD Willingboro, NJ	609-835-2900	Yes*** Forensic Nurse Examiners are on site, police involvement not required***
	Deborah Heart and Lung Center Emergency Dept., Brown Mills	200 Trenton RD Brown Mills, NJ 08015	(609) 893-6611	Yes*** Forensic Nurse Examiners are on site, police involvement not required***
	Cooper Health Systems, Camden	1 Cooper Plaza, Camden, NJ 08103	856-342-2000	Yes*** Forensic Nurse Examiners are on site, police involvement not required***
	Jefferson Stratford Hospital	18 E. Laurel Rd., Stratford, NJ 08084	856-346-6000	Yes*** Forensic Nurse Examiners are on site, police involvement not required***
	Our Lady of Lourdes Medical Center, Camden	1600 Haddon Ave., Camden, NJ 08103	856-757-3500	Yes*** Forensic Nurse Examiners are on site, police involvement not required***
	Virtua Hospital, Voorhees	100 Bowman Drive Voorhees, NJ 08043	856-247-3000	Yes*** Forensic Nurse Examiners are on site, police involvement not required***
	Inspira Medical Center, Vineland	1505 W. Sherman Ave. Vineland, NJ 08360	856-641-8000	Yes*** Forensic Nurse Examiners are on site, police involvement not required***
	Inspira Medical Center, Woodbury	509 N. Broad St., Woodbury, NJ 08096	856-845-0100	Yes*** Forensic Nurse Examiners are on site, police involvement not required***



	Jefferson Washington Township Hospital	435 Hurffville- Cross Keys Road Turnersville, NJ 08012	856-582-2500	Yes*** Forensic Nurse Examiners are on site, police involvement not required***
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**Additional Off-Campus Resources/Supports**

Help Lines: Counseling/Health/Mental Health/Victim Advocacy /Legal Assistance/Protective Orders	Delaware  New Jersey	Delaware Help Line – Dial 211 or 1-800-560-3372 or <a href="http://www.delaware211.org">www.delaware211.org</a>  New Jersey Help Line – Dial 211 or 877- 652-1148 or <a href="http://www.nj211.org">www.nj211.org</a>
For FT Faculty and FT and PT Staff	All Locations	Employee Assistance Program Health Advocate – 877-240-6863 <a href="http://www.healthadvocate.com">www.healthadvocate.com</a>
Other Resources:	Delaware Wilmington	Catholic Charities 302-655-9624  Children and Families First 302-658-5177 800-220-3092  Delaware Coalition Against Domestic Violence 302-658-2958



Rape Crisis (Victim Advocacy)	Delaware  New Jersey	Dial 211 or 1-800-560-3372 or Contact Life Line 800-262-9800 New Jersey Domestic Violence Hotline 1- 800-572-7233
Visa/ Immigration Services	Delaware	Catholic Charities, Diocese of Wilmington 302-655-9624  Community Legal Aid 302-575-0660- Wilmington 302-674-8500-Dover 302-856-0038—Georgetown  Delaware Alliance for Community Advancement 302-656-8200  La Esperanza (Georgetown) 302-854-9262
Visa/ Immigration Services	New Jersey	Camden Center for Law and Social Justice 856-583-2950  Casa Esperanza 732-748-1111  Catholic Charities (Camden) 856-342-4161  El Comite de Apoyo a los Trabajadores Agricolas 856-881-2507  Immigrant Connection at Cross Point Wesley Church Wesleyan Church 856-376-0343

Prosecuting Attorney’s Office (Legal Assistance)	Delaware	<a href="http://www.attorneygeneral.delaware.gov/">www.attorneygeneral.delaware.gov/</a> 302-577-8500
	New Jersey	<a href="http://www.state.nj.us/lps/">www.state.nj.us/lps/</a> 609-292-4925
Department of Education Office for Civil Rights	Philadelphia Office	Office of Civil Rights U.S. Department of Education The Wanamaker Building 100 Penn Square East, Suite 515 Philadelphia, PA 19107-3323 215-656-8451

### 3.5 U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS

All members of the University community may also contact the Office for Civil Rights (a division of the United States Department of Education) to file a complaint pertaining to Title IX.

<b>OFFICE FOR CIVIL RIGHTS</b> <b>U.S. DEPARTMENT OF EDUCATION</b>
<b>Headquarters</b> 400 Maryland Avenue, SW, Washington, DC 20202-1100 Customer Service Hotline #: (800) 421-3481   Facsimile: (202) 453-6012 TTY#: (800) 877-8339   Email: <a href="mailto:OCR@ed.gov">OCR@ed.gov</a>   Web: <a href="http://www.ed.gov/ocr">http://www.ed.gov/ocr</a>
<b>Philadelphia Office</b> U.S. Department of Education The Wanamaker Building 100 Penn Square East, Suite 515 Philadelphia, PA 19107-3323 Telephone: (215) 656-8541 Facsimile: (215) 656-8605 Email: <a href="mailto:OCR.Philadelphia@ed.gov">OCR.Philadelphia@ed.gov</a>

### 3.6 ANONYMOUS REPORT

An individual may report an incident without disclosing their name, identifying the Respondent, or requesting any action. Please note that choosing to make an anonymous report can significantly limit the ability of the University to respond. This information will be used for statistical purposes as well as for enhancing understanding of our campus climate so that we may strengthen sexual misconduct response and prevention efforts.

### 3.7 ONLINE REPORT

An individual may report an incident via an anonymous online reporting form. The online form will not be considered a complaint that would trigger a full investigation. An online report cannot result in electronic communication of resources or outreach from the Title IX Coordinator unless a Complainant is identified. For emergency assistance, please dial 9-1-1.

**Title IX Incident Reporting Form**  
<https://www.wilmu.edu/titleix/filing-of-compliant.aspx>

### 3.8 MANDATORY REPORTING

With limited exceptions, every University employee must report conduct that could constitute sexual harassment / sex discrimination / sexual misconduct under this policy and are considered “Responsible Employees.”<sup>11</sup> A Responsible Employee includes supervisors, managers, coaches, and faculty members with administrative duties or student supervisory duties are responsible for taking all appropriate action to prevent sexual misconduct, discrimination and harassment, to correct it when it occurs, and must promptly report it to the institution’s Title IX Coordinator.

In emergency situations, if there is a suspected crime in progress, or imminent or serious threats to the safety of anyone, faculty and staff members should immediately dial 911 from an on-campus telephone whenever possible.

In non-emergency situations, faculty and staff members who are not Confidential Resources must promptly report suspected violations to the Title IX Coordinator in person or by using the Title IX incident report form by visiting <https://www.wilmu.edu/titleix/filing-of-compliant.aspx>

The University is committed to responding to all alleged violations of this policy. When a complaint or report of sexual harassment is made under this policy, the Title IX Coordinator (or designee) will: (1) confidentially contact the Complainant to offer supportive measures, consider the Complainant’s wishes with respect to supportive measures, and inform them of the availability of supportive measures with or without filing a formal complaint; (2) explain the process for how to file a formal complaint; (3) inform the Complainant that any report made in good faith will not result in discipline; and (4) respect the Complainant’s wishes with respect to whether to investigate unless the Title IX Coordinator determines it is necessary to pursue the complaint in light of a health or safety concern for the community.

The Coordinator will also explain if Informal Resolution is an option if a Formal Complaint is filed. \*A Complainant must file a Formal Complaint to access available Informal Resolution options.

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<sup>11</sup> Delaware H.B. utilizes the term “Responsible Employee” when referring to employees who have a duty to report incidents of sexual misconduct. Although that term is no longer used by the U.S. Department of Education for purposes of Title IX compliance, Wilmington is deferring to the state terminology to meet compliance with both laws.

Choosing to make a report, file a formal complaint, and/or meet with the Title IX Coordinator after a report or formal complaint has been made, and deciding how to proceed, can be a process that unfolds over time. Complainants do not have to decide whether to pursue a formal complaint or to name the other party/ies at the time of the report. Reports are separate from formal complaints, and reporting does not mean that Complainants wish to pursue a formal complaint—it may mean that Complainants would like help accessing resources and supportive measures. Complainants do not have to pursue a formal complaint to take advantage of the supportive measures.

### **3.9 PRIVACY AND CONFIDENTIALITY**

Issues of privacy and confidentiality play important roles in this policy and may affect individuals differently. Privacy and confidentiality are related but distinct terms. “Confidentiality” refers to the circumstances under which information will or will not be disclosed to others. “Privacy” refers to the discretion that will be exercised by the University in the course of any investigation or disciplinary processes under this policy.

Requests for confidentiality or use of anonymous reporting may limit the University’s ability to conduct an investigation or resolve an allegation using the University’s disciplinary proceedings.

Individuals involved in investigations or disciplinary proceedings under this policy are encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation. While discretion regarding the process is important, complainants and respondents are not restricted from discussing and sharing information with others who may support or assist them in presenting their case.

In some circumstances, the reporting responsibilities of University employees, or the University’s responsibility to investigate, may conflict with the preferences of the Complainant and/or Respondent with regard to privacy and confidentiality. Therefore, all individuals are encouraged to familiarize themselves with their options and responsibilities, and make use of confidential resources, if applicable, in determining their preferred course of action.

Medical and counseling records are privileged and confidential documents that the Parties will not be required to disclose. If one Party chooses to provide written consent regarding the disclosure, all Parties will have access to those records.

The University has an obligation to make reasonable efforts to investigate and address complaints or reports of violations of this policy. In all such proceedings, the University will take into consideration the privacy of the Parties to the extent possible.

In cases involving students, the Title IX Coordinator may notify other University employees of the existence of the complaint for the purpose of overseeing compliance with this policy and addressing any concerns related to educational and University sponsored events. While not bound by confidentiality, these individuals will be discreet and will respect the privacy of those involved in the process.

Any additional disclosure of information related to the complaint or report may be made if consistent with the Family Educational Rights and Privacy Act (FERPA), or the Title IX requirements.

### **3.10 SUPPORTIVE MEASURES**

Upon receipt of a complaint or report of a violation of this policy, the University will provide reasonable and appropriate supportive measures. Supportive measures mean individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent and as appropriate, other witnesses or impacted individuals. before or after the filing of a complaint or where no complaint has been filed. Such measures are designed to restore or preserve equal access to the University's program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or the University's educational environment, or deter sexual harassment.

Supportive measures may include:

- Access to counseling services and assistance in arranging an initial appointment;
- Extensions of deadlines or other course-related adjustments;
- Rescheduling of exams and assignments;
- Change in class schedule, including the ability to transfer course sections or withdraw from a course;
- Change in work schedule or job assignment;
- Campus escort services;
- Leaves of absences;
- Increased security and monitoring of certain areas of the campus;
- Imposition of a mutual on-campus "no contact order," an administrative remedy designed to curtail contact and communications between two or more individuals; and/or
- Any other remedy that can be used to achieve the goals of this policy.

Wilmington University will maintain confidentiality regarding any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. In cases that meet the definition and jurisdiction of Title IX, Supportive Measures will also be non-punitive and non-disciplinary.

Any supportive measures will not disproportionately impact the Complainant. Requests for supportive measures may be made by or on behalf of the Complainant to any University official, including the Title IX Coordinator. The Title IX Coordinator is responsible for ensuring the implementation of supportive measures and coordinating the University's response with the appropriate offices on campus.

Supportive measures are meant to be short-term in nature and will be re-evaluated on a periodic basis. To the extent that there is a continuing need for supportive measures after the conclusion of the resolution process, the Title IX Coordinator will work with appropriate school resources to provide continued assistance in the process.

All individuals are encouraged to report concerns about the failure of another to abide by any restrictions imposed by a Supportive Measure. The University will take immediate action to enforce a previously implemented measure and disciplinary penalties can be imposed for failing to abide by a University -imposed measure utilizing the disciplinary process deemed appropriate by the Title IX Coordinator.

### **3.10.1 INTERIM REMOVAL**

In connection with this policy, in circumstances seriously affecting the health or well-being of any person, or where physical safety is seriously threatened, or where the ability of the University to carry out its essential operations is seriously threatened or impaired, an authorized representative may summarily suspend, dismiss, or restrict any person from the University. Prior to taking action against a student in response to an allegation that arises from a complaint under the jurisdiction of Title IX, the University will undertake an individualized safety and risk analysis, determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations justifies removal and provide written notice to the Party. In all such cases involving students, actions taken will be reviewed promptly, typically within one week, by the appropriate University authority and removals subject to Title IX will include an opportunity for redress (appeal) by the Respondent. Complaints involving employees as the Respondent will be subject to the leave provisions that rest within Human Resources and could involve placing the employee on administrative leave (with or without pay) depending of the nature of the reported offense, the determination of an ongoing risk to public safety, and/or other factors as determined by Human Resources.

### **3.11 RIGHTS OF THE PARTIES**

The Title IX Coordinator will ensure that the Complainant receives an explanation of rights and options written in plain language with concise information. The written notification of rights and options will include the following:

- The importance of obtaining and preserving forensic and other evidence;
- The right to report or not report the alleged incident to the University, law enforcement or both, including information about the survivor's right to privacy and which reporting methods are confidential;
- The right to request and receive assistance from campus authorities in notifying law enforcement;
- The right to request and receive assistance in obtaining and enforcing a campus-issued order of protection or no contact order;
- The right to speak to and receive assistance from on-and off-campus Confidential Resources and other organizations that provide support and services to victims and survivors;
- The right to assistance from the University in accessing and navigating campus and local health and mental health services, counseling, advocacy services, legal assistance, financial aid services and immigration/Visa assistance;



- The right to Supportive Measures with or without the filing of a formal Complainant, no matter where the incident is reported to have occurred and that the University will consider the Complainant's wishes with respect to available supportive measures including without limitation changes to academic, living, dining, working, and transportation situations;
- The right to request a Formal or Informal Resolution Process if cause is found to proceed under this Policy and a summary of the appropriate complaint resolution procedures;
- Contact information for all of the people and organizations listed herein; and
- Complainants have the right to request an end to the process except as set forth in this Policy.

In the event that a complaint is filed, the Complainant and the Respondent will receive a written notification of rights and options regarding the adjudication process, to include the following:

- The right for Complainants and Respondents to be treated equitably by the University which includes providing remedies to a Complainant where a determination of responsibility for sexual harassment has been made against the Respondent, and by following a grievance process that complies with this policy;
- The right to a fair, impartial, proceeding that begins promptly and is completed within reasonably prompt timeframes;
- The right to a resolution process that is consistent with the University's policies, transparent to the Complainant and Respondent, and in which the burden of proof and of gathering evidence rests with the University and not the Parties;
- The right to a Support Person of the Party's choosing during the grievance process and to an Advisor of the Party's choosing for any hearing under the Title IX Grievance process. If a Party does not have an Advisor present at the hearing, the University will provide one without fee or charge, an Advisor of the University's choice for purposes of conducting cross examination;
- The right to reasonable accommodations during any hearing, such as not being in the same room as the other Party;
- The right to an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness;
- The right to a determination regarding responsibility made at the conclusion of the resolution process and that the University makes no prior presumption of responsibility; and
- The right not to be retaliated against for filing a Complaint and/or for participating in an Informal or Formal Resolution Process.

### **3.12 AMNESTY/IMMUNITY**

In order to encourage reports of conduct that is prohibited under this policy, the University may offer leniency with respect to other violations which may come to light as a result of such reports, depending on the circumstances involved. The Title IX Coordinator will make the determination on behalf of the University.

### **3.13 TIMELY WARNING**

If the University receives a report of a Clery reportable crime that has occurred within the institution's Clery reportable geography, the institution will assess the report for purposes of sending a Timely Warning Notice (TWN). A TWN will be sent for reports that constitute a serious and continuing threat to the campus community and University Safety will issue these according to University policy. In all cases of sexual misconduct, the Title IX Coordinator will be notified. University Safety, as required by law, may also be required to complete an incident report, and publicly disclose the reported incident of sexual misconduct in the annual security report less personally identifying information. In addition, the University may also share non-identifying information, including data about outcomes and penalties, in aggregate form. At no time will the University release the name or other personally identifiable information of the Complainant to the general public without the express consent of the Complainant or as otherwise permitted or required by law.

### **3.14 OPTIONS FOR PROCEEDING THROUGH UNIVERSITY PROCESS**

#### **3.14.1 INFORMAL AND FORMAL COMPLAINTS**

To initiate the informal resolution process or formal resolution process, a Complainant must file a complaint. A complaint means a written statement filed by a Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct against a Respondent and requesting resolution of the alleged behavior. A complaint may be completed by the Complainant in person or submitted by email, mail or by phone to the Title IX Coordinator.

#### **3.14.2 NO COMPLAINT**

Complainants have the right not to file a complaint, yet they are highly encouraged to seek medical attention and counseling. Complainants who wish to file a complaint at a later date, may do so by utilizing any of the options outlined in this policy. However, please note that a delay in reporting could create obstacles to the University's process for stopping harassment and/or discrimination, remedying its effects, and preventing recurrence as well as potentially weakening evidence that could be useful in determining whether Prohibited Conduct occurred, in obtaining an order of protection or for the State in being able to proceed with a criminal proceeding external to the University.

#### **3.14.3 UNIVERSITY -INITIATED COMPLAINTS**

In limited cases, the Title IX Coordinator may initiate a complaint without a request by the Complainant upon receipt of a report of Sexual Misconduct. The Title IX Coordinator will initiate the complaint when the Title IX Coordinator, in their discretion, determines that a grievance process is warranted given the reported behavior. A Complainant retains standing as a Complainant even in cases where the Title IX Coordinator initiates the complaint. If the Title IX Coordinator initiates a complaint, they will advise the Complainant that they have done so and will provide the rationale to the Complainant regarding why they proceeded.

### **3.14.4 DISMISSALS**

If the Title IX Coordinator determines that the complaint, even if substantiated, would not rise to the level of a violation of this policy, the Title IX Coordinator may dismiss the complaint or refer the complaint to another office for review. A case may also be dismissed for not meeting the threshold and jurisdictional requirements for Title IX, however, a dismissal of a case for purposes of Title IX, does not preclude the University from utilizing this policy for Non-Title IX Sexual Misconduct and referring the matter for Non-Title IX Resolution.

If at any time during the investigation or hearing a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal resolution process or withdraw any allegations therein; the Respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations, the University may dismiss the complaint and end the formal resolution process. The decision as to whether to dismiss the complaint will be determined by the Title IX Coordinator based on the stated goals of this policy. Upon a dismissal permitted pursuant to this section, the University will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the Parties.

Either party may appeal the University's dismissal of a complaint or any allegations by submitting a written appeal within 5 business days of the dismissal. Appeals may follow the grounds outlined in the Appeals section of this policy. If the appeal is denied, the dismissal of the complaint will remain in effect.

### **3.14.5 CONSOLIDATIONS**

The Title IX Coordinator has the discretion to consolidate multiple complaints or reports into a single investigation if evidence relevant to one incident might be relevant to the others. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular "Party," "Complainant," or "Respondent" include the plural, as applicable.

If a case involves violations of other University policies, the Title IX Coordinator, in consultation with other school administrators, will determine which grievance process to use or if different grievance processes would be more appropriate.

## **4 INFORMAL RESOLUTION PROCESS**

Informal resolution is available only after a formal complaint has been filed, the Complainant and Respondent have been sent the Notice of Allegations, prior to a determination of responsibility, and if the Complainant and Respondent voluntarily consent to the process in writing. Informal resolution is not available in cases in which an employee is alleged to have sexually harassed a student.

The Title IX Coordinator will determine whether it is appropriate to offer the parties informal resolution in lieu of a formal investigation of the complaint. In the event that the Title IX Coordinator determines that informal resolution is appropriate, the parties will be provided

written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared. Both parties must provide voluntary, written consent to the informal resolution process.

With the voluntary consent of the parties, informal resolution may be used to agree upon disciplinary sanctions. Disciplinary action will only be imposed against a Respondent where there is a sufficient factual foundation and both the Complainant and the Respondent have agreed to forego the additional procedures set forth in this policy and accept an agreed upon sanction.

Any person who facilitates an Informal Resolution will be trained and free from conflicts of interest or bias for or against either party.

Informal Resolutions may include, but are not limited to;

- Placing a Respondent on notice that, if such behavior has occurred or is occurring, such conduct should cease immediately;
- A written warning;
- Education and/or training for a Respondent and/or department;
- Permanent Supportive Measures for Complainant;
- Mediation or other informal communication between the Complainant and Respondent;
- Events and/or trainings offered to the campus community or particular departments;
- Referral and/or collaboration with another University department in order to address the allegations and eliminate any potential sexual misconduct; and/or
- Other forms of resolution that can be tailored to the needs of the parties.

For cases that meet the Title IX threshold, the Parties may withdraw from the Informal Resolution Process at any time prior to agreeing to a resolution and resume the Formal Resolution Process with respect to the Complaint.

#### **4.1 NOTICE OF ALLEGATION AND ASSIGNMENT TO AN INVESTIGATOR**

Upon filing of a complaint requesting a Formal Resolution, the Complainant and Respondent will receive written notice from the Title IX Coordinator of the allegations of sexual harassment, including sufficient details known at the time with sufficient time to prepare before any initial interview. The Parties will receive written simultaneous notification of additional allegations as appropriate.

Amendments and updates to the notice may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

The Title IX Coordinator will assign one or more Investigators to the case and/or will conduct the investigation personally. The Parties will be provided with the name(s) of the Investigator(s) and allowed 3 business days to request the removal and replacement of an Investigator based on bias or conflict of interest. Any request for a change in an Investigator must be accompanied by supporting information and the decision to assign a new Investigator will be made to the Title IX Coordinator.

Throughout the grievance process, the Title IX Coordinator will provide to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of meetings, investigative interviews, and hearings, with sufficient time for the Party to prepare to participate as well as advise the Party of the opportunity to present evidence and witness information, if applicable.

## **4.2 OVERVIEW OF INVESTIGATION**

### **4.2.1 TIMEFRAME**

The Title IX Coordinator will seek to complete the investigation and any resulting disciplinary process, excluding appeals, within 60 business days after receipt of the complaint.

There may be circumstances that require the extension of timeframes for good cause, including extension beyond 60 business days. Timeframes may be extended to ensure the integrity and completeness of the investigation, comply with a request by external law enforcement, accommodate the availability of witnesses, or accommodate delays by the Parties; or for other legitimate reasons, including the complexity of the investigation and the severity and extent of the alleged misconduct. The University will notify the Parties in writing of any extension of the timeframes for good cause, and the reason for the extension.

Although cooperation with law enforcement may require the University to temporarily suspend the fact-finding aspect of a Title IX investigation, the University will promptly resume its Title IX investigation as soon as it is notified by the law enforcement agency that the agency has completed the evidence gathering process. The University will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide interim measures for the Complainant.

Investigations will proceed according to the aforementioned timeframes during the summer and at other times when the University is not in session. The Title IX Coordinator will work with the Parties to balance the need for promptness and the preference for in-person meetings regarding the investigation.

Timeframes for all phases of the disciplinary process, including the investigation, any related disciplinary proceedings, and any related appeal, apply equally to both Parties.

### **4.2.2 PARTICIPATION**

Wilmington University encourages all members of the University community to cooperate fully with the investigation and disciplinary procedures. Neither the Complainant nor the Respondent is required to participate in the resolution process outlined in these procedures. The University

will not draw any adverse inferences from a complainant's or respondent's decision not to participate or to remain silent during the process. An investigator or Decision-Maker, in the investigation or the hearing respectively, will reach findings and conclusions based on the information available.

It is understood that there may be circumstances in which a Complainant wishes to limit their participation. The complainant retains this right and will not be subject to discipline, although the University may be obligated to conduct an investigation.

Equally, there are numerous reasons why a Respondent may choose not to participate in the process. If a Respondent chooses not to participate in an investigation for any reason, the University process will continue, findings will be reached with respect to the alleged conduct, and the University will issue any sanctions, as appropriate. The University will not, however, draw any adverse inference from a Respondent's silence or stated desire to not participate.

The University will protect the privacy of the participating Parties and witnesses in any proceeding, meeting, or hearing to resolve complaints.

### **3.1.1 INVESTIGATION OVERVIEW**

During the investigation, the parties will have an equal opportunity to be heard, to submit information and other inculpatory and exculpatory evidence, to identify witnesses including fact and expert witnesses, and to submit questions they believe should be directed by the Investigator to the other or to any witness. Evidence that is readily available, but not provided during the course of the investigation, is not considered to be new information and will not be allowed to be submitted at the hearing or as a basis for appeal.

The Investigator will notify and seek to meet separately with the parties and third-party witnesses and will gather other relevant and available information including, without limitation, electronic or other records of communications between the parties or witnesses, photographs, and written documentation.

The University will not require, allow, rely upon, or otherwise use questions or evidence during the investigation, hearing, or determination of responsibility that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

The University will not allow questions or evidence, during the investigation, hearing, or determination of responsibility, 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 are offered to prove that someone other than the Respondent committed the conduct alleged by the 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 will not restrict either Party from discussing allegations under investigation or from presenting relevant evidence.

### **3.2 INSPECTION OF EVIDENCE AND THE INVESTIGATIVE REPORT**

Prior to completion of the investigative report, the Title IX Coordinator will send to each Party a preliminary investigative report containing the evidence subject to inspection and review, redacted of personally identifiable information as necessary, in an electronic format or a hard copy. The Parties will have 10 business days to submit a written response, to meet again with the Investigator, and/or to request the collection of additional evidence by the Investigator. The evidence subject to inspection and review includes any evidence obtained as part of the investigation that is directly related to the allegation including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a Party or other source. The evidence subject to inspection and review will not contain any privileged or inadmissible information as defined in this policy.

Following the opportunity to review the preliminary investigative report, the Investigator will create a final investigative report that incorporates any written response or new information from the Parties or collected by the Investigator. The final investigative report will also fairly summarize the relevant evidence. The Investigator has the discretion to determine the relevance of any evidence presented.

The Title IX Coordinator will send to each Party the final investigative report in an electronic format or a hard copy, for their review and the parties will have 10 business days to submit a written response.

If there is significant, substantive, new information and/or evidence provided in the written response, the Investigator will make the final determination regarding whether a revised Final Investigative Report will be issued to both Parties. As stated above, information that was reasonably available during the course of the investigation will not be allowed to be introduced at the hearing or used as a basis for appeal. The Final Investigative Report and any written responses will be provided to the Decision-Maker and the Parties at least 3 business days prior to the date of the hearing.

For cases that meet the threshold for Title IX, the Title IX Coordinator will secure written permission from the Parties to share the preliminary and final investigative reports with the Party's Advisor. Reports will not be shared by the University with any Support Person not acting in the role of the Advisor of Choice.

#### **3.2.1 ASSIGNMENT TO GRIEVANCE PROCEDURES**

If, at the conclusion of the investigation, the University has not previously determined if the case meets the threshold and jurisdiction for Title IX, the Title IX Coordinator will make a final determination as to whether to proceed under the Title IX or Non-Title IX Grievance Procedures. If the case does not meet the threshold and jurisdiction for Title IX, the Title IX Coordinator will dismiss the case for purposes of Title IX and proceed under the Non-Title IX Grievance Procedures.

### **3.3 DETERMINATION REGARDING RESPONSIBILITY**

At the conclusion of the Investigation, the Parties will be provided with the name(s) of the Decision-Maker(s) and will be allowed three (3) business days to request the removal and replacement of a Decision-Maker based on bias or conflict of interest. Any request for a change in a Decision-Maker must be accompanied by supporting information and the decision to assign a new Decision-Maker will be made by the Title IX Coordinator. At that time, either party may also request that the Parties not to be in the same room for any hearing or meeting in which both may attend. The University will determine the appropriate use of technology to satisfy the request.

#### **3.3.1 NON-TITLE IX GRIEVANCE PROCEDURES--STUDENTS**

For Non-Title IX cases in which the Respondent is a student, the determination regarding responsibility will be made at a live hearing utilizing the procedures outlined in this section.

##### ***Pre-hearing Requirements***

At least five (5) business days prior to the hearing, the Parties must submit names of witnesses they would like to appear at the hearing and any relevant questions to be asked of the witnesses and the other party. The Parties may ask additional relevant questions at the hearing, but pre-submitted questions will be vetted in advance for relevancy and admissibility and ruled on during the live proceeding.

##### ***Pre-hearing Conference***

In order to promote a fair and expeditious hearing, the Title IX Coordinator may request that the Parties and their Advisors attend a pre-hearing conference. The pre-hearing conference assures that the Parties and their Advisors understand the hearing process and allows for significant issues to be addressed in advance of the hearing.

##### ***Hearing Procedures***

All hearings will be conducted in a live hearing format which means all Parties and the Decision-Maker may be physically present in the same geographic location, or at the request of either Party or the University, the Parties may be located in separate rooms with technology enabling the Decision-Maker and parties to simultaneously see and hear the Party or the Witness answering questions.

At the hearing, the Decision-Maker is responsible for maintaining an orderly, fair, impartial, and respectful hearing. Participants at a live hearing are expected to abide by the Decision-Maker's directions and determinations, maintain civility, and avoid emotional outbursts and raised voices. The Decision-Maker has broad authority to respond to disruptive or harassing behaviors, including taking a break in the hearing, the length of which will be determined by the Decision-Maker. Additionally, the Decision-Maker may exclude any offending person.

The Decision-Maker will determine the method for questioning at the hearing, but all questions posed by the parties will be asked exclusively by the Decision-Maker.



All hearings are closed to the public. A recording will be made by the University, but all other recordings are prohibited.

### ***Evidentiary Considerations at the Hearing***

Questions at the hearing are limited to those assessing credibility and relevant questions that have not previously been asked and answered in the final investigative report.

Any evidence that the Decision-Maker determines is relevant may be considered. The Parties will have the opportunity to present the evidence they submitted, subject to any exclusions determined by the Decision-Maker. Generally, the Parties may not introduce evidence, including witness testimony, at the hearing that they did not identify during the pre-hearing process. However, the Decision-Maker has discretion to accept or exclude additional evidence presented at the hearing. In addition, the Parties are expected not to spend time on undisputed facts or evidence that would be duplicative.

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 are offered to prove that someone other than the Respondent committed the conduct alleged by the 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 Decision-Maker will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### ***Advisor Role at Hearing***

The Parties may have an Advisor of Choice to accompany them to the hearing. The Advisor of Choice may not actively participate but may confer with the Party as is reasonably necessary. If the Advisor of Choice violates the rules or engages in behavior or advocacy that harasses, abuses, or intimidates either Party, a witness, or the Decision-Maker, that Advisor of Choice may be prohibited from further participation. \*NOTE: for Non-Title IX Grievance Procedures, the University has no obligation to provide an Advisor, but the Parties may do so at their own expense, if applicable.

### ***Participation***

A Complainant, Respondent, or witness may decline to participate in the hearing. The Decision-Maker will not draw an inference about the responsibility determination based solely on a party's or witness's absence from the hearing or refusal to submit to questions.

## **3.3.2 NON-TITLE IX GRIEVANCE PROCEDURES—EMPLOYEES**

For Non-Title IX cases in which the Respondent is an employee, the determination regarding responsibility will be made by the Decision-Maker based on the final investigative report (there is no live hearing.) The Decision-Maker is responsible for maintaining an orderly, fair, and impartial process. The Decision-Maker, in their discretion, may pose additional questions to the Parties or to witnesses in writing or in person. A Complainant, Respondent, or witness may decline to further participate. The Decision-Maker will not draw an inference about the

responsibility determination based solely on a party's or witness's refusal to submit to additional questions.

In the absence of good cause, as determined by the Decision-Maker, information, witnesses, and other evidence discoverable through the exercise of due diligence that is not provided to the Investigator during the investigation will not be considered in the decision-making process.

### **3.3.3 TITLE IX GRIEVANCE PROCEDURES FOR STUDENTS AND EMPLOYEES**

For cases that have been determined by the Title IX Coordinator to meet the threshold for Title IX Sexual Harassment as well as the Title IX jurisdictional requirements, the determination regarding responsibility will be made at a live hearing utilizing the procedures outlined in this section.

For cases that have been determined to meet the threshold to be adjudicated under the Title IX Adjudication Proceedings, hearings are typically scheduled no less than 10 days following the sending the investigative report to the parties and their Advisors.

#### ***Pre-Hearing Conference***

In order to promote a fair and expeditious hearing, The Title IX Coordinator may request that the Parties and their Advisors attend a pre-hearing conference. The pre-hearing conference assures that the Parties and their Advisors understand the hearing process and allows for significant issues to be addressed in advance of the hearing.

#### ***Hearing Procedures***

All hearings will be conducted in a live hearing format which means all parties and the Decision-Maker(s) may be physically present in the same geographic location, or at the request of either party or the University, the parties may be located in separate rooms with technology enabling the Decision-Maker(s) and parties to simultaneously see and hear the Party or the Witness answering questions.

While the hearing is not intended to be a repeat of the investigation, the Parties will be provided with an equal opportunity for their Advisors to conduct cross-examination of the other party and of relevant witnesses. A typical hearing may include: brief opening remarks by the Decision-Maker; questions posed by the Decision-Maker to one or both of the parties; cross-examination by either Party's Advisor of the other Party and relevant witnesses; and questions posed by the Decision-Maker to any relevant witnesses.

At the hearing, the Decision-Maker is responsible for maintaining an orderly, fair, impartial, and respectful hearing. Participants at a live hearing are expected to abide by the Decision-Maker's directions and determinations, maintain civility, and avoid emotional outbursts and raised voices. The Decision-Maker has broad authority to respond to disruptive or harassing behaviors, including taking a break in the hearing, the length of which will be determined by the Decision-Maker. Additionally, the Decision-Maker may exclude any offending person.

All hearings are closed to the public. A recording will be made by the University, but all other recordings are prohibited.

### ***Evidentiary Considerations at the Hearing***

Any evidence that the Decision-Maker(s) determines is relevant may be considered. The parties will have the opportunity to present the evidence they submitted, subject to any exclusions determined by the Decision-Maker. Generally, in the absence of good cause, the parties may not introduce evidence, including witness testimony, at the hearing that they did not identify during the pre-hearing process. However, the Decision-Maker has discretion to accept or exclude additional evidence presented at the hearing. In addition, the Parties are expected not to spend time on undisputed facts or evidence that would be duplicative.

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 are offered to prove that someone other than the Respondent committed the conduct alleged by the 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 Decision-Maker will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### ***Cross-Examination and the Advisor***

The Parties may have an Advisor of Choice at the hearing. The Advisor is responsible for conducting the cross-examination which includes asking the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. The Advisor is not to represent a Party, but only to relay the Party's cross-examination questions that the Party wishes to have asked of the other Party and witnesses. Advisors may not raise objections or make statements or arguments during the live hearing. If a Party does not have an Advisor, the University will appoint one on behalf of the Party free of charge. In this capacity, the Advisor will be appointed for the sole purpose of conducting cross examination of the other Party and witnesses.

When a Party's Advisor is asking questions of the other Party or a witness, the Decision-Maker will determine whether each question is relevant before the Party or Witness answers it and will exclude any that are not relevant or unduly repetitive and will require rephrasing of any questions that violate the rules of conduct. If the Decision-Maker determines that a question should be excluded as not relevant, they will explain their reasoning.

If the Advisor violates the rules or engages in behavior or advocacy that harasses, abuses, or intimidates either Party, a witness, or the Decision-Maker, that Advisor or Support Person may be prohibited from further participation. The University will then provide that Party with a University appointed Advisor of the University's choosing.

### ***Participation***

A Complainant, Respondent, or witness may decline to participate in the hearing. The Decision-Maker will not draw an inference about the responsibility determination based solely on a party's or witness's absence from the Hearing or refusal to submit to questions.

### **3.4 Findings**

#### **3.4.1 STANDARD OF EVIDENCE**

In all proceedings, the Decision-Maker shall use a preponderance of the evidence standard to determine whether the alleged violation of the policy occurred. The preponderance of the evidence means a standard of proof in which the totality of the evidence offered in support of a fact is greater or more convincing than the evidence which is offered in opposition to it; given the totality of information the version of events that is more likely than not. Preponderance of the evidence is understood to require more than 50 percent certainty to determine responsibility for a policy violation (51% or greater).

#### **3.4.2 WRITTEN DETERMINATION OF RESPONSIBILITY**

The Complainant and Respondent will simultaneously receive a written determination regarding responsibility applying the preponderance of the evidence standard typically within five (5) business days of the determination of responsibility. The written determination letter, drafted by the Decision-Maker, will include:

- The allegations constituting sexual harassment;
- A description of the procedural steps taken during the grievance process, including any notifications to the Parties, interviews with parties and witnesses, site visits, and methods used to gather evidence;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;
- A statement and rationale for the result of each allegation, including findings, sanctions, and remedies; and
- Procedures and permissible bases for the Parties to appeal the determination for appeal

The determination of responsibility becomes final either on notification of the results of the appeal or the date on which an appeal would no longer be considered timely.

Remedies and supportive measures that do not impact the Respondent should not be disclosed in the written determination; rather the determination should simply state that remedies will be provided to the Complainant.

#### **4.5.3 INTENTIONALLY FALSE REPORTS**

Individuals who make reports that are later found to have been intentionally false or made maliciously without regard for truth may be subjected to disciplinary action up to and including termination or expulsion. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by an investigation.

#### **4.5.4 SANCTIONS AND REMEDIES**

If there is a finding of responsibility based on a preponderance of the evidence, the determination of sanctions and remedies will be made by the Decision-Maker in consultation with the respective trained University administrator.

Sanctions will be determined based on the severity and circumstances of the misconduct and the Respondent's previous disciplinary history (if any). The University will disclose to the Complainant the sanctions imposed on the Respondent that directly relate to the Complainant when such disclosure is necessary to ensure equal access to their educational programs and activities.

Remedies are designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. Remedies that do not impact the Respondent will not be disclosed in their written determination; rather, the determination will simply state that remedies were provided.

Whatever the outcome of the investigation, hearing, or appeal, the Complainant and Respondent may request ongoing or additional supportive measures. Ongoing supportive measures that do not unreasonably burden a party may be considered and provided even if the Respondent is found not responsible.

**Sanctions for students include but are not limited to:**

- a. Permanent dismissal from the University. Note: If a student is suspended or dismissed from the University and is later reinstated, credits for courses at other institutions of higher learning are not transferrable
- b. Dismissal from the University with permission to reapply after a specified period of time. Conditions precedent to readmission may be established in conjunction with such a dismissal
- c. Suspension from the University for a specified period of time. Any suspension may be followed by a probationary period and may include restriction or forfeiture of privileges.
- d. A delay as to when a degree is to be conferred upon the student
- e. A determination that the student is not entitled to have their degree conferred
- f. Disciplinary probation with or without loss of designated privileges for a specified period of time
- g. Restricted privileges such as removal from elective or appointed office and/or ineligibility in representing the University
- h. Mandatory training
- i. Letter of warning regarding conduct
- j. No contact directive

**Sanctions for employees include but are not limited to:**

- a. Disciplinary probation with or without loss of designated privileges for a specified period
- b. Mandatory training
- c. No contact directive
- d. Mandated attendance in educational program or referral to another provider
- e. Written or verbal warning
- f. Suspension
- g. Demotion

h. Dismissal-Separation from employment

**4.5.5 Appeal**

Appeals are available after a complaint dismissal or after a final determination is made. The Complainant and the Respondent have equal rights to an impartial appeal. All appeals will be referred to an Appellate Decision-Maker appointed by the President or designee. The Decision-Maker for the appeal will not have served as the Investigators or Decision-Maker in the previous steps of the process.

A Complainant or Respondent may file a written appeal with the Title IX Coordinator on the grounds that:

- A. Procedural irregularity that affected the outcome of the matter;
- B. 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/or
- C. 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.

The purpose of an appeal is not to initiate a review of substantive issues of fact or a new determination of whether a violation of University rules has occurred. The appellate Decision-Makers may decide to uphold the original decision, to alter the imposed penalty, or to return the case for additional proceedings or other action.

The deadline for filing a written appeal is five business days from the date the Parties are provided the written determination of responsibility. If no appeal is filed, or if an appeal is not timely, the original finding will stand, effective on the date the appeal period expires. The submission of an appeal stays (puts on hold) any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal. If a party appeals, the Title IX Coordinator will as soon as practicable notify the other party in writing of the appeal; however, the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal. Appeals will be decided by an individual, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or Decision-Maker in the same matter.

The Title IX Coordinator will have primary responsibility for interactions with the Parties, for the gathering of information needed for the appeal, and for notifying both Parties in writing of the outcome of any appeal. The written decision regarding the appeal will be provided simultaneously within five business days after the conclusion of the review and will describe the results of the appeal and the rationale for each result.

**5 RECORD-KEEPING AND ANNUAL REPORTS**

The University will keep for 7 years, the following:

- All information obtained as part of each Sexual Misconduct investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript; any disciplinary sanctions and/or remedies; any appeal, including the result of the appeal; and any informal resolution and the result therefrom.
- All information regarding any action taken, including supportive measures, and a rationale as to why a complaint was not filed. If a Complainant was not provided supportive measures, a rationale must be provided as to why supportive measures were not provided.
- All training materials used to train Title IX Coordinators, Investigators, Decision Makers, and those who facilitate the informal resolution process.

Generally, information from a student’s discipline file is not released without the student's written consent. However, certain information may be provided to individuals within or outside the University who have a legitimate legal or educational interest in obtaining it. Typically, information released to those outside the University is limited to information associated with “in violation” findings that resulted in a suspension or expulsion (discipline file). Please refer to the federal Family Educational Rights and Privacy Act of 1974 (FERPA).

Personnel files are the property of the University and will not be shared without a subpoena.

## **6 EDUCATION PROGRAMS AND TRAINING OF TITLE IX PERSONNEL**

### **6.1.1 TRAINING FOR THE UNIVERSITY COMMUNITY**

The University engages in comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to reduce and eliminate sexual misconduct or other forms of prohibited conduct which:

- Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research, or assessed for value, effectiveness, or outcome;
- Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community and societal levels;
- Include primary prevention and awareness programs directed at incoming students and ongoing prevention and awareness campaigns directed at current students.

Risk Reduction is defined as options intended to decrease perpetration and bystander action and increase empowerment for victims to promote safety and help individuals and communities address conditions that facilitate violence. Experiencing sexual misconduct or other forms of prohibited conduct is never the victim’s fault. Only abusers are responsible for abuse. However, the following are some strategies to reduce the risk of victimization. For example, The [Rape, Abuse, & Incest National Network \(RAINN\)](https://www.rainn.org/safety-prevention) has created a list which can be found here: <https://www.rainn.org/safety-prevention>.

Bystanders play a critical role in the prevention of sexual and relationship violence. The University promotes a culture of community accountability where bystanders are actively engaged in preventing violence without causing further harm. However, individuals may not

always know what to do even if they want to help. Below is a list of some ways to be an active bystander. If you or someone else is in immediate danger, dial 911 if a person is yelling at or being physically abusive towards another, and it is not safe to interrupt.

- Watch out for your friends and fellow students/employees. If you see someone who looks like they could be in trouble or need help, ask if they are ok.
- Confront people who seclude, hit on, attempt to make out with, or have sex with people who are incapacitated.
- Speak up when someone discusses plans to take sexual advantage of another person.
- Believe someone who discloses sexual assault, abusive behavior, or experience with stalking.
- Refer people to on- or off-campus resources listed in this policy for health, counseling, or legal support.

## **6.2 TRAINING OF TITLE IX PERSONNEL**

The University will require that the Title IX Coordinator, Investigators, Decision-Makers, or anyone who facilitates an informal resolution process receive annual training per the requirements of Title IX and the Clery Act-VAWA. They will not have a conflict of interest or bias for or against any complainant or respondent.

The annual training provided includes, but is not limited to the following: the definition of sexual harassment, including an understanding of educational program or activity; how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes; how to serve impartially, including avoiding prejudgment about the facts at issue, conflicts of interest, and bias; the technology to be used at a live hearing; issues of relevance, including questioning, and investigative reports.

## **7 DISABILITY ACCOMMODATIONS AND INTERPRETIVE SERVICES**

The University makes every reasonable effort to accommodate individuals with disabilities per Section 504 of the Rehabilitation Act of 1973 (504) and the Americans with Disabilities Act Amendments Act of 2008 (ADAAA). In compliance with this commitment, Wilmington employs the Office of Student Accessibility Services to determine reasonable and appropriate accommodations and auxiliary aids for access and participation in college-sponsored classes, services and programs.

Students with a disability who desire accommodation regarding this policy must request it with the Title IX Coordinator. The Title IX Coordinator will make a determination regarding the request after consultation with the Office of Student Accessibility Services and notify the appropriate parties. An Individual will not be considered to have a disability allowing for accommodation unless and until the student has met with the Office of Student Accessibility Services and been noted as a person to whom accommodations should be provided. Find information about the Office of Student Accessibility Services at the University at: <https://www.wilmu.edu/studentlife/disabilityservices/index.aspx>.

Employees with a disability should provide the required documentation to Human Resources.



## **8 REVISION AND INTERPRETATION**

The Policy is maintained by the Human Resources Department and was most recently approved by the Wilmington University Executive team on August 19, 2020. The University reserves the right to review and update the policy in accordance with changing legal requirements and specific needs of the University.

Any questions of interpretation regarding the Policy shall be referred to the Title IX Coordinator. The Title IX Coordinator's determination is final.

All reports received by the University after this date will be administered per the procedures described under this policy.

## **9 FREE SPEECH AND ACADEMIC FREEDOM**

The University recognizes the value of free speech and academic freedom. This Sexual Misconduct Policy Governing Students and Employees is intended to protect members of the University community from discrimination. It is not designed to regulate pedagogical discourse or conduct legitimately related to course content, teaching methods, scholarship, or public commentary of an individual faculty member or students' educational, political, artistic, or literary expression in classrooms. However, freedom of speech and academic freedom do not condone speech or expressive conduct that violates federal or state anti-discrimination laws.

## **10 RELATED POLICIES**

### **10.1 STUDENTS:**

- Family Education and Privacy Act (FERPA)
- Student Code of Conduct

### **10.2 EMPLOYEES:**

- Minors on Campus
- Consensual Relations Policy
- Employee Code of Conduct