

# Western Michigan University Civil Rights Grievance Procedures

For alleged violations of the Non-Discrimination Policy  
and/or the Sexual Misconduct Policy

BASED ON THE ATIXA 2020 ONE POLICY, TWO PROCEDURES (1P2P) MODEL.  
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## **OVERVIEW**

### **A. Purpose**

Western Michigan University (WMU, Western) is committed to providing an educational and employment environment that is free from Discrimination, Discriminatory Harassment, all forms of Sexual Misconduct, and Retaliation for engaging in protected activity.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness in all aspects of the education program or activity, WMU has developed policies and procedures that provide a prompt, fair, and impartial resolution of allegations.

### **B. Scope and Revisions**

The Civil Rights Grievance Procedures (Procedures) describe the detailed resolution process for reports and complaint of Covered Behavior under the [Non-Discrimination Policy](#) and the [Sexual Misconduct Policy](#) on or after **May 11, 2026**, and succeed all previous procedures. For the Sexual Misconduct Policy, incidents occurring before August 14, 2020, will be addressed using the Policy that was in place at the time of the incident, but the procedures used will be those in place at the time of the complaint. Capitalized terms within the Procedures have a specific meaning and are defined in [Appendix A](#), the Non-Discrimination Policy and/or the Sexual Misconduct Policy (collectively referred to as Policies). Examples and characteristics of prohibited behaviors are in [Appendix B](#).

Institutional Equity (IE) regularly reviews and update the Procedures. WMU reserves the right to make changes to this document as necessary, and those changes are effective once they are posted online. If laws or regulations change or court decisions alter policy or procedural requirements in a way that impacts this document, this document will be construed to comply with the most recent laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background federal and state laws that frame such policies and codes, generally.

A change required by a court or government order could occur during an active investigation or resolution process. If that happens, WMU reserves the right to adjust the Policies and Procedures accordingly and notify the Parties of any necessary mid-process changes. This could include entirely replacing the Policy or associated Procedures, which could necessitate restarting an investigation or resolution process. WMU will make every effort to minimize the impact on the Parties as much as possible if changes are unavoidable.

### **1. Notice, Report or Complaint**

The Procedures are initiated when a disclosure of Discrimination, Discriminatory Harassment or Sexual Misconduct is made to a Mandated Reporter, and/or when a report or complaint is submitted to Institutional Equity.

While certain Employees and Students are Mandated Reporters under the Policies, all WMU Faculty, Staff and Students, other than those deemed Confidential Employees, are strongly encouraged to promptly report all known details of actual or suspected Discrimination, Discriminatory Harassment, and Sexual Misconduct to IE and appropriate officials immediately. Supportive measures may be offered to the harmed party as a result of such disclosures, without formal WMU action.

In the Procedures, a Complainant is an individual who has allegedly been subjected to behavior prohibited under the Policies; the person submitting a complaint. A Respondent is an individual who has allegedly engaged in behavior prohibited under the Policies; the person responding to a complaint. Complainant and Respondent are each considered a Party, and are collectively referred to as Parties.

IE Administrator refers to [Institutional Equity staff](#) involved in the Procedures; Executive Director, Title IX Coordinator, Associate Director/ADA Coordinator, Equity Compliance Specialist, Equity Outreach Specialist. The Title IX Coordinator is also designated by WMU to oversee the University's centralized review and resolution of alleged sexual misconduct. A Deputy Title IX Coordinator and other designated administrators may assist with carrying out these responsibilities.

Each Party has rights throughout the Procedures, detailed in [Appendix C](#).

## **2. Initial Assessment**

An IE Administrator conducts an initial assessment, typically within five (5) calendar days of receiving Notice, Report or Complaint.<sup>1</sup> The initial assessment typically includes:

- Assessing whether the reported conduct may reasonably constitute a Policy violation
- Assessing safety concerns
- Determining whether WMU has jurisdiction over the reported conduct.
- Offering and coordinating supportive measures for the Parties
- Notifying Complainant, or the person who reported the allegation(s), of the available resolution options
- Determining whether Complainant wishes to file a Formal Complaint

In assessing safety concerns, IE will consult with the Coordinated Response Team, as needed. The Team may consist of a representative from any of the following areas; Public Safety, Student Affairs, Academic Labor Relations, Human Resources, Public Safety and other offices as needed.

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<sup>1</sup> If circumstances require, the IE Executive Director will designate another person to oversee the resolution process should an allegation be made about an IE Administrator, if they are otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

Complainant will be advised of resources and the importance of preserving physical evidence and the procedure for doing so in a timely manner, as described in [Appendix D](#).

The University will consider the interest of Complainant and Complainant's expressed preference for manner of resolution. As outlined in the Policy section "Complainant Agency and Autonomy Not to Proceed", where possible, and as warranted by an assessment of the facts and circumstances, the University will seek action consistent with Complainant's request.

Depending on the circumstances, Respondent may or may not be notified of the reported behavior. Respondent shall be notified of the outcome of the assessment if the University seeks action that would impact Respondent, such as Emergency Removal, other actions that restrict Respondent's movement on campus, or the initiation of an investigation.

### **3. Support Available**

#### **A. Supportive Measures Purpose and examples**

Supportive Measures are designed to protect the Parties involved. They are not sanctions, they are non-disciplinary, non-punitive measures available to either Party, without cost and regardless of whether Complainant chooses to pursue a resolution.

As part of its Assessment, the University may provide Supportive Measures based on information gathered from a Report or individual consultation with each Party. An IE Administrator, has the discretion to implement these measures as appropriate and in accordance with applicable University policies.

Supportive Measures may include: referral to counseling, medical, and/or other healthcare services; safety planning; public safety transportation and escort on campus; changing class schedule, including the ability to take an "incomplete," drop a course without penalty, or transfer sections (with the agreement of the appropriate faculty); changing residence building; changing work schedule or job assignment; referral for academic accommodations and support services, such as tutoring; instituting a no contact order; or any other remedy that can be tailored to the individuals involved in order to achieve the goals of this Policy.

#### **B. Interim Action for a Student**

WMU may impose an action (including University suspension) on a Student at any time during the Grievance Process by working with the Vice President Student Affairs or designee, in accordance with the provisions and process set forth in the WMU Student Code (see [wmich.edu/studentrights/code](http://wmich.edu/studentrights/code)).

#### **C. Title IX Emergency Removal of a Student**

WMU may emergency remove a Student accused of Title IX Sexual Harassment upon receipt of a Formal Complaint or at any time during the Grievance Process. Prior to an emergency

removal, WMU will conduct an individualized risk assessment and may remove the Student if that assessment determines that an immediate threat to the physical health or safety of any Student or other individual justifies removal.

When an emergency removal or interim suspension is imposed, wholly or partially, the affected Student will be notified of the action, which will include a written rationale, and the option to challenge the emergency removal within two (2) calendar days of the notification. Upon receipt of a challenge, the IE Administrator will meet with the Student (and their Advisor, if desired) as soon as reasonably possible thereafter to allow them to show cause why the removal/action should not be implemented or should be modified. The Title IX Coordinator will communicate the final decision in writing, typically within five (5) calendar days of the review meeting. When a challenge is not made within two (2) calendar days, the opportunity for objections to the emergency removal will be deemed waived.

An emergency removal may be modified or lifted as a result of a requested review or as new information becomes available.

#### **D. Placing Employees on Leave**

When Respondent is an Employee, or a Student-Employee accused of misconduct in the course of their employment, the Employee may be placed on leave in accordance with policy and procedures applicable to their Employee group.

#### **E. Support Persons and Advisors**

The Parties may each have someone (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings, interviews, and hearings within the resolution process, including intake, if they so choose. The Parties may select whomever they wish, as long as the person is eligible and available.<sup>2</sup> A Support Person ....and an Advisor....

Choosing a Support Person and/or Advisor who is also a witness in the process creates potential for bias and conflict of interest, which may be explored by the Decision-maker.

As a public entity, WMU fully respects and accords the Weingarten rights of Employees, meaning that for Parties who are entitled to union representation, WMU will allow the unionized Employee to have their union representative (if requested by the party) as well as another Support Person and/or Advisor of their choice present for all Grievance Process meetings and interviews. Witnesses are permitted to have union representation or Advisors in resolution process interviews or meetings.

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<sup>2</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

#### **4. Formal Complaint**

IE's receipt of a signed Formal Complaint requesting a resolution begins the next phase of the process.

The Title IX Coordinator may sign a Formal Complaint on behalf of the University based on a report of Title IX Sexual Harassment. In doing so, the Title IX Coordinator does not become a Complainant or a Party for the case.

Allegations of Retaliation, Unauthorized Disclosure and Failure to Comply/Process Interference will be resolved through IE coordinating with the Disciplinary Authority for Respondent; department head, Human Resources, Labor Relations Administrators, Student Rights and Responsibilities, as appropriate. The University will seek an outcome appropriate for the circumstances and the resolution may involve sanctions/disciplinary actions from warning through expulsion/termination, as described in [Sanctions/Disciplinary Actions](#).

Complaint resolutions may involve Remedies specific to the workplace or educational environment.

##### **A. Assessment of Formal Complaint**

IE will consider the nature of the reported behavior, the safety of the Parties and of the campus community, Complainant's expressed preference for resolution, the necessity of any Safety Measures, and Respondent's due process rights.

IE will assess whether the reported behavior on the Formal Complaint is covered under the Policies and determine the appropriate action: 1) refer Complainant to support resources 2) refer a report of behavior not covered by the Policies to Student Rights and Responsibilities, Human Resources, the department where the behavior is alleged to have occurred, or another administrative office; or 3) initiate an informal or formal resolution.

In such cases where a report is referred, IE will not investigate, but will maintain a file for the case in the event that a future incident requires further review under the Policy.

IE will communicate the assessment outcome to Complainant in writing. That notice will include whether the alleged incident meets the specific Policy definition.

IE's decision not to proceed with a Formal Complaints of Title IX Sexual Harassment must be based on specific dismissal criteria and is subject to appeal, as described in [Appendix E](#).

##### **B. Collateral Misconduct**

Collateral misconduct includes potential violations of other WMU policies that occur in conjunction with alleged violations of the Non-Discrimination Policy and/or the Sexual

Misconduct Policy, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all allegations. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under these Procedures. In such circumstances, the IE Administrator may consult with WMU officials who typically oversee such conduct (e.g., Human Resources, Student Rights and Responsibilities (SRR), Academic Affairs) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the IE Administrator's discretion. All other allegations of misconduct unrelated to incidents covered by the Policy will typically be addressed separately through procedures described in the Student Code ([wmich.edu/studentrights/code](http://wmich.edu/studentrights/code)), Employee Handbook and Collective Bargaining Agreements ([wmich.edu/hr/policies](http://wmich.edu/hr/policies)).

### **C. Addressing Counter-Complaints**

WMU is obligated to ensure that the Grievance Process is not abused for retaliatory purposes. Although WMU permits the filing of counter-complaints, an IE Administrator will use an initial assessment, described above, to assess whether the allegations in the counter-complaint are made in good faith. When counter-complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may therefore constitute a Policy violation. Counter-complaints determined to have been reported in good faith will be processed using the Grievance Process. At an IE Administrator's discretion, investigation of such claims may take place after resolution of the underlying initial Formal Complaint.

### **D. Resolution Process Roles**

In addition to staff in Institutional Equity, WMU relies on designated faculty and staff to carry out the following roles in the resolution process:

- Assist with initial assessment (Coordinated Response Team members)
- Hearing Advisor to Parties
- Appeal Decision-maker

A Hearing Official is a specific type of Decision-maker who conducts a hearing, and may be a University administrator, third-party consultant or attorney. IE Administrators, in consultation with senior administrators as necessary, appoint these individuals and provides role-based training (see training materials [posted online](#)).

## **5. Informal Resolution Options**

To initiate Informal Resolution, Complainant or Respondent may make such a request to the IE Administrator at any time prior to a Final Determination or the IE Administrator may offer the option to the Parties. WMU will obtain voluntary confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to

participate in Informal Resolution. The two approaches to Informal Resolution are detailed in this section.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process. Any party participating in Informal Resolution can withdraw from the Informal Resolution process at any time and initiate or resume the Formal Grievance Process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Formal Grievance Process should Informal Resolution not be successful.

If an investigation is already underway, the IE Administrator has discretion to determine if the investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

Prior to engaging in Informal Resolution, WMU will provide the Parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that WMU will maintain and under which circumstances they may be released.

The selection of an informal resolution process considers the Parties' preferences but is ultimately determined at an IE Administrator's discretion.

An informal resolution is not permitted when a Student alleges Title IX Sexual Harassment by a University Employee.

An IE Administrator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate sanctions/disciplinary actions (e.g., dissolution of the agreement and resumption of the Formal Grievance Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). Where the failure to abide by the Informal Resolution agreement terms results in a failure to remedy a Policy violation, an IE Administrator must consider whether to dissolve the agreement and reinstate the Formal Grievance Process to remedy the impact, as required by law.

### **A. Accepted Responsibility**

Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Formal Grievance Process. If Respondent indicates an intent to accept responsibility for all alleged Policy violations, the ongoing process will be paused, and an IE Administrator will determine whether Informal Resolution is an option.

An IE Administrator will determine whether all Parties and WMU are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, an IE Administrator implements the accepted Finding that Respondent is in violation of WMU Policy, implements agreed-upon restrictions and remedies, and determines any other appropriate responses in coordination with other appropriate administrator(s), as necessary.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Formal Grievance Process will either begin or resume.

When a resolution is reached, the appropriate sanction(s) or disciplinary actions are promptly implemented to effectively stop the discrimination or harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on Complainant and the community.

## **B. Alternative Resolution**

WMU offers a variety of voluntary alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve:

- restorative practices
- shuttle mediation
- supported direct conversation or interaction between the Parties
- indirect action by an IE Administrator or other appropriate WMU officials
- an agreement to pursue individual or community remedies including targeted or broad-based educational programming or training
- other forms of resolution that can be tailored to the needs of the Parties.

Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach.

An IE Administrator has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, including terms of confidentiality and release.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. An IE Administrator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

The results of Formal Complaints resolved by alternative resolution are accepted voluntarily and therefore not appealable.

## **6. Formal Resolution Options**

WMU uses two sets of procedures; Title IX Resolution (known as Process A) and Administrative Resolution (known as Process B).

Title IX Resolution/Process A is applicable to all Formal Complaints of Title IX Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking that occur within WMU's Education Program or Activity.

Administrative Resolution/Process B may be applicable to Formal Complaints of (1) Title VII/FHA Sexual Harassment; (2) Sexual Exploitation; (3) Discrimination and/or Discriminatory Harassment; and (4) Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, or Stalking that fall outside of WMU's Education Program or Activity.

The choice between applying Process A or B is solely at an IE Administrator's discretion and is informed by the assessment, as well as Policy and legal requirements.

Unionized Employees are subject to the terms of their agreements to the extent those agreements do not conflict with federal or state compliance obligations.

At the beginning of Process A and B, an IE Administrator will provide the Parties with written Notice of the Investigation and Allegations (the "NOIA", as described in [Appendix F](#)).

The remainder of the resolution will follow either A or B below, as appropriate.

## **A. Title IX Resolution/Process A**

### **i. Resolution Timeline**

WMU will make a good faith effort to complete the Formal Grievance Process within ninety (90) calendar days, including any appeals, which the Title IX Coordinator can extend as necessary for appropriate cause. The Parties will receive regular updates on the progress of the Formal Grievance Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

The investigation part of the process is completed expeditiously, normally within sixty (60) calendar days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

WMU may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. WMU will promptly resume its

Formal Grievance Process as soon as feasible. During such a delay, WMU will implement and maintain supportive measures for the Parties as deemed appropriate.

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

WMU will make a good faith effort to complete the Grievance Process as promptly as circumstances permit and will regularly communicate with the Parties to update them on the progress and timing of the process.

## **ii. Ensuring Impartiality**

No individual materially involved in the administration of the Formal Grievance Process, including the Title IX Coordinator, Investigator(s), and Hearing Official(s), may have or demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s), Hearing Advisor(s), Hearing Official, and Appeal Decision-maker(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The Parties may raise a concern regarding bias or conflict of interest at any time during the Formal Grievance Process, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another trained individual will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Executive Director.

If the investigator consults a medical expert for an opinion or other evidence to assist in the investigation, that medical professional shall not have an actual or perceived conflict of interest relating to any of the Parties or the University.

The Formal Grievance Process involves an objective evaluation of all Relevant Evidence obtained, including evidence that supports that Respondent violated the Policy and evidence that supports that Respondent did not violate the Policy. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written Investigation Report that accurately summarizes this evidence.

## **iii. Witness Role and Participation in the Investigation**

Witnesses who are WMU Employees are strongly encouraged to cooperate with and participate in WMU's investigation and Formal Grievance Process. Student witnesses and witnesses from

outside WMU community are encouraged to cooperate with WMU investigations and to share what they know about a Formal Complaint.

Interviews may be conducted in person, via online video platforms (e.g., Microsoft Teams, WebEx), or, in limited circumstances, by telephone. WMU will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

#### **iv. Interview Recording**

It is standard practice for Investigators to create a record of all interviews pertaining to the Formal Grievance Process, by recording, transcript, or written summary. The Parties may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

All interviews are recorded, and all involved persons should be made aware of the audio and/or video recording. The recording and/or transcript of those meetings will be provided to the Parties in the Evidence File for their review.

#### **v. Evidentiary Considerations**

The Investigator(s) and the Hearing Official will only consider Relevant or Directly Related Evidence.

Neither the investigation nor the hearing will consider:

- Questions or evidence about Complainant's sexual predisposition<sup>3</sup>
- Questions or evidence about Complainant's prior sexual behavior, unless such questions and evidence about Complainant's prior sexual behavior are offered to prove that someone other than Respondent committed the alleged conduct, or if the questions or evidence concern specific incidents of Complainant's prior sexual behavior with respect to Respondent and are offered to prove consent<sup>4</sup>
- Questions or evidence about a party or witness's records that are made or maintained by a physician, psychologist, or psychiatrist unless the party or witness provides voluntary, written consent for the records to be considered

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<sup>3</sup> WMU defines "predisposition" in alignment with its commonly understood and dictionary definition of being inclined toward a thing, action, or person. Predisposition does not encompass an aversion, or being disinclined to a thing, action, or person.

<sup>4</sup> WMU defines "prior sexual behavior" to include only sexual actions taken by or involving Complainant prior to the reported incident(s), not to the absence of such actions.

Within the boundaries stated above, the investigation and the hearing can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

Previous disciplinary action of any kind involving Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

In gathering information, the investigators may consider other allegations of similar conduct by Respondent to the extent such information is relevant to the Report being investigated and is available. Such information may be relevant to prove motive, intent, absence of mistake, pattern or another material fact.

#### **vi. Investigation**

All investigations are thorough, reliable, impartial, prompt, and fair. WMU may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondent(s), when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

- **Investigator Conducts Interviews and Gathers Relevant Evidence**
  - Identifies issues and develops a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses
  - Provides written notification of the date, time, and location of all investigation meetings, including the expected participants and purpose
  - Conducts any necessary follow-up interviews with Parties or witnesses
  - Solicits the names of suggested witnesses and questions each party wishes to have asked of another party or witness
  - Requesting all available relevant evidence
  
- **Investigator Compiles and Shares Evidence File**
  - Investigator provides Evidence File access for the Parties and their respective Advisors. They have an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which WMU does not intend to rely in reaching a determination, for a ten (10)-calendar-day review and comment period so that each party may meaningfully respond to the evidence. The Parties may elect to waive the full ten (10) days.
  - During this time, Parties may verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for

verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

- During this time period, Parties may submit new, Relevant Evidence and information obtained through the Parties' review of the Evidence File
- Investigator provides the Title IX Coordinator with the Directly Related Evidence File

- **Investigator Compiles and Shares Investigation Report**

- Investigator writes an Investigation Report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation and party and witness interviews, and provides all Relevant Evidence
- Investigator incorporating any new, Relevant Evidence and information obtained through the Parties' review of the Evidence File and any follow-up meetings into the Investigation Report
- Investigator sends Investigation Report (or provides access) to the Parties, their respective Advisors, and the Title IX Coordinator.

**vii. Referral for Hearing**

Provided that the Formal Complaint is not resolved through Informal Resolution, once the Final Investigation Report is shared with the Parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be held less than ten (10) calendar days from the conclusion of the investigation – when the Investigation Report is transmitted to the Parties and the Hearing Official – unless all Parties and the Hearing Official agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Hearing Official and provide a copy of the Final Investigation Report and the file of Directly Related Evidence.

**viii. Hearing Official/Decision-maker Role**

The Hearing Official will not have had any previous involvement with the Formal Complaint. Those who have served as Investigators maybe witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Hearing Official in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill the facilitator role. The hearing will convene at a time and venue determined by the Title IX Coordinator.

**ix. Live Hearing Requirements**

The following provisions apply to a live hearing:

- **Hearing Venue Options and Recordings.** The Hearing Official and Parties must be able to simultaneously see and hear a party or witness while that person is speaking.
  - The live hearing typically occurs via video technology, but may occur in person as an accommodation. Either Party may make a request to the Title IX Coordinator to provide a suitable space on campus with video technology, but they must do so at least seven (7) calendar days prior to the hearing.
  - All hearings will be recorded, and Parties may request a copy of the recording from the Title IX Coordinator following the live hearing.
  - No unauthorized recordings are permitted.
- **Scheduling.** Hearings for possible violations that occur near or after the end of an academic term (assuming Respondent is still subject to the Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term, including during the summer, as needed, to meet WMU's resolution timeline and ensure a prompt resolution. Employees, including Parties and witnesses, who do not have 12-month contracts are still expected to participate in Formal Grievance Processes that occur during months between contracts.
- **Hearing Participants.** Persons who may be present for a hearing include the Hearing Official, hearing facilitator, Investigator(s), the Parties and their Advisors, anyone providing authorized accommodations, interpretation, and/or assistive services, and anyone else deemed necessary by the Hearing Official. Witnesses are present only during their portion of the testimony.
- **Hearing Advisors and Support Persons.** The Parties may have the assistance of an Advisor of their choice at the hearing or can request that WMU appoint a trained Hearing Advisor for them. Appointed Advisors are not attorneys. If a party wishes to have an attorney as their Hearing Advisor, they must locate and pay for that attorney themselves.
  - During the pre-hearing meeting and live hearing, Parties may only be accompanied by their Hearing Advisor and one Support Person. No other persons (e.g., advisors, friends, family) may accompany, attend, or listen in on the hearing unless explicitly authorized by the Title IX Coordinator, with each party being provided the same opportunity.
  - Parties and Hearing Advisors are permitted to have their phones and a laptop or tablet, but these should only be used during the hearing in a matter consistent with the Policy.
  - During the hearing, all questions that a party wishes to ask must be posed by the Hearing Advisor, not the Parties.
  - If the party does not have a Hearing Advisor, the Title IX Coordinator will provide the party with someone for the purpose of Advisor-conducted questioning.
- **Disability Accommodations and Other Assistance.** Parties should contact the Title IX Coordinator at least three (3) calendar days prior to the hearing to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, if possible.

#### **x. Hearing Notice**

The Title IX Coordinator will send the Parties a notice of hearing letter no less than ten (10) calendar days prior to the hearing. Once emailed and/or received in-person, notice is presumptively delivered. The notice includes:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/disciplinary actions that could result
- The time, date, and location of the hearing
- A description of any technology that will be used to facilitate the hearing
- Relevant information regarding hearing logistics, pre-hearing meetings, the Final Investigation Report, the Parties and witnesses participating in the hearing, the identity of the Hearing Official, details related to questioning, the role of Hearing Advisors, impact/mitigation statements, and how to request disability accommodations or other assistance

#### **xi. Witness Participation**

Witnesses are encouraged to participate in, and make themselves reasonably available for, the hearing. They may participate in-person or via video technology that allows the Hearing Official and the Parties to see and hear the witness while that person is speaking. Witnesses are not permitted to be accompanied by an Advisor without the Title IX Coordinator's express permission unless collective bargaining rights permit witnesses to have Hearing Advisors. At the discretion of the Hearing Official, a witness may participate by phone if no other reasonable alternative is available.

The Title IX Coordinator will notify all witnesses of their requested participation in the hearing at least five (5) calendar days prior to the hearing. Witnesses will be present for the hearing only during their testimony.

If any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Title IX Coordinator may reschedule the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless:

- All Parties and the Hearing Official assent to the new witness's participation in the hearing without remanding the Formal Complaint back to the Investigator,
- The Hearing Official deems the evidence presented by the new witness to be relevant and not information already established in the record, and
- The witness's late involvement was not the result of bad faith by the witness, the Parties, or others.

If the above criteria are not met, but the witness's evidence is deemed relevant and not duplicative, the Hearing Official may, at their discretion, engage in any of the following actions:

- Delay the hearing
- Provide the Parties with at least five (5) calendar days to review the relevant portions of the new witness's statements, if such statements are submitted
- Remand the Formal Complaint back to the Investigator for further investigation or verification
- Allow the Parties to review and comment on the testimony of the new witness<sup>5</sup>

If the evidence is deemed not relevant, the Hearing Official may proceed with the hearing absent the new witness's participation.

## **xii. Pre-Hearing Meetings**

The Hearing Official may request a pre-hearing meeting with each Party and their Hearing Advisors to familiarize them with the hearing process and invite them to submit the questions or topics they wish to ask or discuss at the hearing. This allows the Hearing Official to consider their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Hearing Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a pre-hearing decision based on any new information or testimony offered at the hearing. The Hearing Official will consider arguments that evidence identified as relevant in the Final Investigation Report is, in fact, not relevant. Similarly, evidence identified by the Investigator(s) as directly related but not relevant may be argued to be relevant. The Hearing Official will document and share their rationale for any evidence or question exclusion or inclusion, if any, at a pre-hearing meeting with each party.

The Hearing Official will work with the Parties to finalize a witness list for the hearing, and the Title IX Coordinator will notify any witnesses of the hearing's logistics. The Hearing Official, **only** with the agreement of all Parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the Investigation Report or during the hearing, and their presence is not essential to assess their credibility.

Pre-hearing meeting(s) will not be recorded. The pre-hearing meetings will typically be conducted as separate meetings with each party/Advisor, and can be done remotely, or as a written communication exchange. The Hearing Official will work with the Parties to establish

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<sup>5</sup> 34 C.F.R. § 668.46(k)(3)(B)(3) requires "timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings."

the format and timing of the meetings and will circulate a summary of any rulings made to ensure all Parties and Hearing Advisors are aware.

### **xiii. Hearing Procedures**

#### ***Evidentiary Considerations***

The Parties must provide all evidence to the Investigator(s) prior to completion of the Final Investigation Report. Evidence offered after that time will be evaluated by the Hearing Official for relevance. If deemed relevant, the Parties and Hearing Official must agree to admit it into the record. If the evidence is deemed not relevant, the Hearing Official may proceed with the hearing absent the new evidence.

The new relevant evidence will be admitted to the record if:

- All Parties and the Hearing Official assent to the new evidence being included in the hearing without remanding the Formal Complaint back to the Investigator,
- The evidence is not duplicative of evidence already in the record, and
- The new evidence was either not reasonably available prior to the conclusion of the Final Investigation Report, or the failure to provide it in a timely manner was not the result of bad faith by the Parties, witnesses, or others.

If the above criteria are not met, but the evidence is deemed materially relevant and not duplicative, the Hearing Official may, at their discretion, engage in any of the following actions:

- Delay the hearing
- Provide the Parties with at least ten (10) calendar days to review the relevant evidence
- Remand the Formal Complaint back to the Investigator for further investigation or analysis
- Allow the Parties time to review and comment on the new evidence

If the evidence is deemed not relevant, the Hearing Official may proceed with the hearing without allowing the new evidence.

#### ***Joint Hearings***

In Complaints involving more than one Respondent and/or involving more than one Complainant accusing the same person of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent or Formal Complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for

each Respondent and/or for each Formal Complaint with respect to each alleged policy violation.

### ***Introductions and Hearing Procedure Explanation***

The Hearing Official will:

- Explain the hearing procedures
- Introduce the participants
- Answer any procedural questions prior to and as they arise throughout the hearing

### ***Testimony and Questioning***

The Hearing Official will facilitate questioning of the Parties and witnesses first by the Hearing Official and then by the Parties through their Hearing Advisors. All questions are subject to the Decision-maker's relevance determination. The Hearing Advisor will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted). The proceeding will pause to allow the Hearing Official to consider the question (and state it if it has not already been stated aloud), and the Hearing Official will determine whether the question will be permitted, disallowed, or rephrased. The Hearing Official will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Hearing Official will limit or disallow questions they deem not appropriate on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), seek or pertain to impermissible evidence, or are abusive and has the final say on all questions and relevance determinations. The Hearing Official may consult with legal counsel on any admissibility questions.

If the Parties raise an issue of bias or conflict of interest of an Investigator or Hearing Official at the hearing, the Hearing Official may elect to address those issues, consult with legal counsel, refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not an issue at the hearing, the Hearing Official should not permit irrelevant questions that probe for Investigator bias.

### ***Refusal to Submit to Questioning and Inferences***

Any party or witness may choose not to attend the hearing, or not to offer evidence and/or answer questions at the hearing. The Hearing Official can only rely on the available Relevant Evidence in making a Final Determination. The Hearing Official may not draw any inference **solely** from a party's or witness's absence from the hearing or refusal to answer any or all questions.

A Hearing Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor unless the party being advised consents to that information being shared.

### ***Hearing Recordings***

WMU records hearings (but not deliberations) for purposes of review in the event of an appeal. No unauthorized audio or video recording of any kind is permitted during the hearing.

The Hearing Official, the Parties, their Hearing Advisors, Appeal Decision-makers, and other appropriate WMU officials will be permitted to review the recording or review a transcript of the recording upon request to the Title IX Coordinator. No unauthorized disclosure, including sharing, copying, or distribution of the recording or transcript, is permitted.

### ***Determination***

After the hearing is closed, the Hearing Official will determine whether Respondent is responsible for the alleged Policy violation(s) based on the preponderance standard of evidence (more likely than not; greater than 50%).

The Hearing Official will then prepare a written Outcome Report detailing all findings and final determinations, the rationale(s) explaining the decision(s), the evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and will deliver the report to the Title IX Coordinator within five (5) calendar days of the end of the hearing unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the Parties.

#### **xiv. Notice of Outcome**

If Respondent is found not responsible for a Policy Violation, the Title IX Coordinator will provide the Parties with a Final Outcome Report upon receipt from the Hearing Official.

If Respondent is found responsible for a Policy Violation, The Title IX Coordinator will provide the Parties with a *Preliminary* Outcome Report upon receipt from the Hearing Official. The Title IX Coordinator will contact the relevant Disciplinary Authority. The Disciplinary Authority will review the Investigation Report, Evidence File, Preliminary Outcome Report and any pertinent conduct history, and will determine the appropriate sanction(s)/disciplinary action(s) in consultation with other appropriate administrators, as required. The Disciplinary Authority may invite and consider impact and/or mitigation statements from the Parties when determining appropriate sanction(s), if any. The Disciplinary Authority will notify the Title IX Coordinator of the outcome within five (5) calendar days of receiving the hearing materials, or as soon as practicable under relevant disciplinary procedures and collective bargaining agreement provisions. The Title IX Coordinator will provide the Parties with a Final Outcome Report upon receipt of the sanction(s)/disciplinary action(s) from the Disciplinary Authority.

The Final Outcome Report will specify the Finding for each alleged Policy violation, and a detailed rationale, written by the Decision-maker, supporting the Findings to the extent WMU is permitted to share under federal or state law. It will include any sanction(s)/disciplinary action(s) and also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals. Unless based on Respondent's admission of responsibility, the Determination may be appealed by any party.

Notifications may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official WMU records, or emailed to the Parties' WMU-issued or other approved email account. Once emailed and/or received in-person, notice is presumptively delivered.

## **B. Administrative Resolution/Process B**

Administrative Resolution can be pursued for any Covered Behavior under the Non-Discrimination and Sexual Misconduct Policies other than Title IX Sexual Harassment. Administrative Resolution starts with a thorough, reliable, and impartial investigation.

### **i. Resolution Timeline**

WMU will make a good faith effort to complete the Administrative Resolution Process within sixty (60) calendar days, including any appeals, which the IE Administrator can extend as necessary for appropriate cause. Investigations can take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. The Parties will receive regular updates on the progress of the Administrative Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

Investigations are completed expeditiously, normally within sixty (60) calendar days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

WMU may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. WMU will promptly resume its Administrative Resolution Process as soon as feasible. During such a delay, WMU will implement and maintain supportive measures for the Parties as deemed appropriate.

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

## **ii. Ensuring Impartiality**

No individual materially involved in the administration of the Administrative Resolution Process, including the IE Administrator, Investigator(s), and Decision-maker(s), may have or demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The IE Administrator will vet the assigned Investigator(s), Decision-maker(s), and Appeal Decision-maker(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The Parties may raise a concern regarding bias or conflict of interest at any time during the Administrative Resolution Process, and the IE Administrator will determine whether the concern is reasonable and supportable. If so, another trained individual, will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the IE Administrator, concerns should be raised with the Interim Executive Director and ADA Coordinator.

The Administrative Resolution Process involves an objective evaluation of all Relevant Evidence obtained, including evidence that supports that Respondent violated the Policy and evidence that supports that Respondent did not violate the Policy. Credibility determinations will not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written Investigation Report that accurately summarizes this evidence.

## **iii. Investigation**

All investigations are thorough, reliable, impartial, prompt, and fair. They involve interviewing all available, relevant Parties and witnesses, obtaining Relevant Evidence, and identifying sources of expert information, as necessary.

WMU may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondent(s), when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

Investigations involve the following:

- Determining the identity of and contacting all involved Parties and potential witnesses to participate in an investigation interview
- Identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses

- Providing written notification of the date, time, and location of all investigation meetings, including the expected participants and purpose
- Conducting any necessary follow-up interviews with Parties or witnesses.
- Writing a Draft Investigation Report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation and party and witness interviews, and provides all Relevant Evidence
- Providing the Parties and their respective Advisors an electronic or hard copy of the Draft Investigation Report for a ten (10) calendar day review and comment period so that each party may meaningfully respond to the evidence. The Parties may elect to waive the full ten (10) days.
- The Parties must provide all evidence to the Investigator(s) prior to completion of the Final Investigation Report.
- Incorporating any new, Relevant Evidence and information obtained through the Parties' review of the Draft Investigation Report and any follow-up meetings into the Final Investigation Report
- Responding in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report.
- Sharing the Final Investigation Report with the IE Administrator [and/or legal counsel] for their review and feedback
- Providing the Decision-maker(s) with the Final Investigation Report, including assessment and synthesis of the Relevant Evidence without making any recommendations or reaching any conclusions

#### **iv. Witness Role and Participation in the Investigation**

Witnesses who are WMU Employees are strongly encouraged to cooperate with and participate in WMU's investigation and Administrative Resolution Process. Student witnesses and witnesses from outside WMU community are encouraged to cooperate with WMU investigations and to share what they know about a complaint.

Party and/or witness interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, WebEx), or, in limited circumstances, by telephone. WMU will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

#### **v. Interview Recording**

It is standard practice for Investigators to create a record of all interviews pertaining to the Administrative Resolution Process, by recording, transcript, or written summary. The Parties

may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

All interviews are recorded, and all involved persons should be made aware of the audio and/or video recording. The recording and/or transcript of those meetings will be provided to the Parties in the Draft Investigation Report for review, after which the Parties may suggest additional questions to be asked of another party or witness or additional witnesses. Those subsequent meetings or interviews are also recorded and/or transcribed.

#### **vi. Evidentiary Considerations**

Any evidence that is relevant and credible may be considered, including a Respondent's prior disciplinary history as well as evidence indicating a pattern of misconduct, subject to the limitation in (vii) below. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

#### **vii. Evidentiary Exclusions**

Unless the Decision-maker determines it is appropriate, the investigation and the Finding do not consider: (1) incidents not directly related to the possible violation(s), unless they evidence a pattern; (2) the irrelevant sexual behavior of the Parties (though there may be a limited exception made with regard to the sexual behavior between the Parties); (3) irrelevant character evidence.

Although Respondent's previous conduct violations (if any) are not generally admissible as information supporting the current allegation(s), the Investigator(s) may supply the Decision-maker with information about previous good faith allegations and/or findings when that information suggests potential pattern and/or predatory conduct.

Character witnesses or evidence may be offered. The Decision-maker will determine if the character evidence is relevant. If so, it may be considered. If not, it will be excluded.

A party or witness's records that are made or maintained by a physician, psychologist, or psychiatrist are inadmissible unless the party or witness provides voluntary, written consent for the records to be considered.

#### **viii. Respondent Admits Responsibility**

If Respondent elects to admit to the charged violations and waive further process at any point in the Administrative Resolution Process, the Decision-maker is authorized to accept that admission, adopt it as their Finding/Final Determination, and administer sanctions. This would waive Respondent's right to appeal. If Respondent rejects the Finding/Final Determination/sanctions, or does not admit to all charged violations, the Administrative

Resolution Process continues to its conclusion. Complainant retains their right to appeal a Final Determination when Respondent admits responsibility.

#### **ix. Determination**

The Decision-maker reviews the Investigation report and all responses, and then makes the Final Determination by applying the preponderance standard of evidence (more likely than not; greater than 50%).<sup>6</sup>

If the record is incomplete, the Decision-maker may direct the Investigator(s) to re-open the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the Parties or any witnesses if needed.

The Decision-maker will then prepare a written Outcome Report will specify the Finding for each alleged Policy violation, and a detailed rationale supporting the Findings to the extent WMU is permitted to share under federal or state law.

#### **x. Notice of Outcome**

If Respondent is found **not responsible** for a Policy Violation, the Decision-maker will provide the Parties with a Final Outcome Report within ten (10) calendar days of receiving the Investigator's Final Investigation Report.

If Respondent is found **responsible** for a Policy Violation, the Decision-maker will provide the Parties with a *Preliminary* Outcome within ten (10) calendar days of receiving the Investigator's Final Investigation Report. The Decision-maker will contact the relevant Disciplinary Authority. The Disciplinary Authority will review the Investigation Report, the Preliminary Outcome Report and any pertinent conduct history, and will determine the appropriate sanction(s)/disciplinary action(s) in consultation with other appropriate administrators, as required. The Disciplinary Authority may invite and consider impact and/or mitigation statements from the Parties when determining appropriate sanction(s), if any.

The Disciplinary Authority will notify the Decision-maker of the outcome within five (5) calendar days of receiving the materials, or as soon as practicable under relevant disciplinary procedures and collective bargaining agreement provisions. The Decision-maker will provide the Parties with a Final Outcome Report upon receipt of the sanction(s)/disciplinary action(s) from the Disciplinary Authority.

The Final Outcome Report will specify the Finding for each alleged Policy violation, and a detailed rationale, written by the Decision-maker, supporting the Findings to the extent WMU is permitted to share under federal or state law. It will include any sanction(s)/disciplinary

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<sup>6</sup> When the Title IX Coordinator is the Investigator or has been heavily involved in the investigation process prior to a determination, a Decision-maker should be another trained individual to ensure there is no conflict of interest.

action(s) and also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals. Unless based on Respondent's admission of responsibility, the Determination may be appealed by any party.

Notifications may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official WMU records, or emailed to the Parties' WMU-issued or other approved email account. Once emailed and/or received in-person, notice is presumptively delivered.

## **7. Sanctions/Disciplinary Actions**

Factors the Disciplinary Authority may consider when determining sanctions/disciplinary actions and disciplinary action include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- Respondent's disciplinary history
- The need for sanctions/disciplinary actions to bring an end to the Discrimination, Discriminatory Harassment and/or Sexual Misconduct
- The need for sanctions/disciplinary actions to prevent the future recurrence of Discrimination, Discriminatory Harassment and/or Sexual Misconduct
- The need to remedy the effects of Discrimination, Discriminatory Harassment and/or Sexual Misconduct on Complainant and the community
- The impact on the Parties
- Respondent's acknowledgement of responsibility or contrition
- Any other information deemed relevant by the Disciplinary Authority

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

The sanctions described in the Procedures are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

### **A. Student Sanctions**

The Director of Student Rights and Responsibilities, or their designee, may be a Decision-maker and/or Disciplinary Authority in cases involving Student Respondents.

The information below is a summary of information in the [Student Code](#), the guide used for sanctioning student misconduct. The following are sanctions that may be imposed upon Students singly or in combination:

- *Reprimand*: An official written censure containing three components. A reprimand for inappropriate behavior, notice that the conduct associated with the violation must stop immediately and permanently, and notice that additional violations shall result in more severe sanctions.
- *Behavior Contract*: A written contract between the Student and the University wherein the Student agrees to correct inappropriate behaviors.
- *Discretionary Sanctions*: Service to the University, service to the community, attendance at educational seminars, classes, or workshops, written assignments, or other activities deemed appropriate by the conduct body. The Student is required to submit written proof of participation in and/or completion of the sanction to the conduct body. (Some seminars, classes and workshops may require a registration fee.)
- *Restitution*: Compensation for loss, damage or injury. This may take the form of appropriate service and/or monetary or material replacement.
- *Loss of Privileges*: Denial of specified privileges for a designated period of time. Examples of privileges that can be denied include: academic program dismissal, campus registration of an automobile, parking in a specific area or during specific time periods, access to a building or portion of a building, access to a program, on-campus living, holding of an office in a Registered Student Organization, participation in extra-curricular activities, access to a particular living group and any other privilege that the conduct body deems appropriate to deny.
- *Probation*: Probation requires that a Student's conduct be reviewed for a specified period of time. Conditions of the probationary period will be specified to the Student and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate. If a Student is found responsible for violation of any institutional policy(s) during the probationary period, more severe sanctions could be applied.
- *Suspension*: Separation of the Student from the University or a University program for a period of time, after which the Student is eligible to return. During this time, the Student under suspension shall forfeit all rights of their Student status for the duration of their suspension and may have their privileges of access to University premises revoked. Conditions for readmission and/or continued enrollment after readmittance may be specified. All conditions for readmission must be satisfied, completed and certified to Student Rights and Responsibilities or designee prior to readmittance. Also, a written plan for adherence to conditions of continued enrollment after readmittance from a suspension shall be provided to Student Rights and Responsibilities or designee for review and approval.
- *Expulsion*: Permanent separation of the Student from the University. An expelled Student shall have no access to University premises and shall forfeit all rights of their Student status immediately and permanently upon expulsion.

- *Withholding Degree*: The University may withhold awarding a degree otherwise earned until the completion of the process set forth in this Student Code, including the completion of all sanctions imposed, if any.
- *Revocation of Degree*: A degree awarded from WMU may be revoked for fraud, misrepresentation or other violation of University standards in obtaining the degree, or for other serious violations committed by a Student prior to graduation. Being a degree holding alumna is sufficient association with the University and basis for application of this sanction.
- *Other Actions*: In addition to, or in place of, the above sanctions, WMU may assign any other sanctions as deemed appropriate

## **B. Employee Disciplinary Actions**

The information below is a summary of possible actions described in the Employee Handbook, and collective bargaining agreements. The following may be imposed upon Employees singly or in combination:

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Shift or schedule adjustments*
- *Reassignment*
- *Delay of (or referral for delay of) Tenure Track Progress*
- *Assignment to a New Supervisor*
- *Restriction of Stipends, Research, and/or Professional Development Resources*
- *Suspension/Administrative Leave with Pay*
- *Suspension/Administrative Leave without Pay*
- *Termination*
- *Other Actions: In addition to, or in place of, the above sanctions/disciplinary actions, WMU may assign any other disciplinary actions as deemed appropriate.*

## **8. Withdrawal or Resignation Before Complaint Resolution**

### **A. Students**

Should Respondent decide not to participate in a Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a Student Respondent

withdraws from WMU, the Resolution Process typically ends with a dismissal, as WMU has lost primary disciplinary jurisdiction over the withdrawn Student. However, WMU may continue the Resolution Process when, at the discretion of the IE Administrator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged Discrimination, Discriminatory Harassment and/or Sexual Misconduct.

Regardless of whether the Formal Complaint is dismissed or pursued to completion of the Resolution Process, WMU will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Discrimination, Discriminatory Harassment and/or Sexual Misconduct.

When a Student withdraws or takes a leave of absence while the process is pending, the Student may not return to WMU in any capacity until the allegations are resolved and any sanctions imposed are satisfied. If the Student indicates they will not return, the IE Administrator has discretion to dismiss the allegations and bar the Student from returning. The Registrar, Admissions, and HR may be notified accordingly.

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

## **B. Employees**

Should an Employee Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If an Employee Respondent leaves their employment with WMU with unresolved allegations pending, the Resolution Process typically ends with dismissal, as WMU has lost primary disciplinary jurisdiction over the former Employee. However, WMU may continue the Resolution Process when, at the discretion of the IE Administrator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged Discrimination, Discriminatory Harassment and/or Sexual Misconduct.

Regardless of whether the allegations are dismissed or pursued to completion of the Resolution Process, WMU will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Discrimination, Discriminatory Harassment and/or Sexual Misconduct.

When an Employee resigns and the allegations are dismissed, the Employee may not return to WMU in any capacity. The Registrar, Office of Admissions, and HR will be notified accordingly. A note will be placed in the Employee's file that they resigned with allegations pending and are not eligible for academic admission or rehire with WMU

until the matter is resolved. The records retained by the IE Administrator will reflect that status.

## **9. Appeals**

### **A. Appeal of Finding**

Either Party may appeal the finding within five calendar days of the date on the written notice of the Final Outcome Report. The following are the accepted bases:

- A procedural irregularity affected the outcome of the matter
- There is new evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter
- The IE Administrator, Investigator(s), or Decision-maker(s) alleged to have a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter

Appeals must be submitted to an IE administrator in writing, cite one of the above bases for the appeal, and provide sufficient and detailed information to support the appeal. The University may deny an appeal if these conditions are not met. If denied, the Parties and their Advisors will be simultaneously notified in writing of the denial and the rationale.

If the appeal conditions are met, an interdisciplinary Appeals Committee will review and decide appeals. Each member of the Committee shall be trained to handle issues related to the relevant Policy and will be impartial. Appeals shall be limited to a review of the file and supporting documents (except as necessary to gain insight into any new information).

After review, the Appeals Committee may take any of the following actions in response to an appeal:

- Uphold the findings;
- Reverse a finding of responsibility for any or all charges;
- Require that IE reopen the investigation and re-adjudicate the claim.

Decisions made by the Committee shall be final and communicated in writing to Parties and Advisors.

### **B. Appeals of Sanctions/Disciplinary Action**

Either Party may appeal the sanction/disciplinary action within five calendar days of the date on the Final Outcome Report. The following are the accepted bases:

- A procedural irregularity affected the outcome of the matter
- The Disciplinary Authority alleged to have a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter

Appeals must be submitted to an IE administrator in writing, cite one of the above bases for the appeal, and provide sufficient and detailed information to support the appeal. The University may deny an appeal if these conditions are not met. If denied, the Parties and their Advisors will be simultaneously notified in writing of the denial and the rationale.

If the appeal conditions are met, the appeal request will be forwarded to the other Party, and the appropriate administrative office. The underlying investigation and the determination of responsibility will provide the foundation for any further review of the sanction; no new investigation or finding with respect to responsibility will occur. No Appeal Decision-maker will have been previously involved in the Resolution Process for the matter.

Employee disciplinary appeals will follow established grievance processes for the Respondent's Employee group in accordance with their collective bargaining agreement and/or Human Resources procedures. A statement from the Party opposing the appeal will be considered. The appeal Decision-maker(s) must remain impartial in performing this function will forward the appeal decision in writing to the Parties, Human Resources/Labor Relations and IE. The appeal decision is final.

Student sanction appeals will go to the Vice President of Student Affairs. Each Party will be given the opportunity to review and respond in writing to the other Party's appeal. Any review of the other Party's appeal and any subsequent response by the opposing Party must be submitted to the SRR within five (5) University business days from the notification of the appeal. All appeal documents from each Party will be considered together in one review process.

The Vice President for Student Affairs or designee will review the appeal of Student sanctions and must remain impartial in performing this function. The Decision-maker will forward the appeal decision in writing to SRR and IE. SRR will contact the Parties with the outcome. The appeal decision of the Vice President for Student Affairs or designee is final.

In some cases, at the discretion of the Title IX Coordinator and Director of the SRR, the imposition of Student sanctions may take effect immediately and will not be stayed pending the resolution of the appeal. In most instances, however, decisions made regarding Student sanctions shall not be final until an appeal deadline has passed with no appeal by either Party or at the conclusion of the appeal process.

### **C. Appeal Determination Process**

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Decision-maker(s) will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the Finding/Final Determination only when there is clear error and to the sanction(s)/disciplinary action(s) only if there is a compelling justification to do so.

An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the Finding and/or sanction(s).

The Appeal Decision-maker may consult with the IE Administrator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The IE Administrator will maintain documentation of all such consultation.

### **10. Long-Term Remedies/Actions**

Following the conclusion of a Resolution Process, and in addition to any sanctions implemented or Informal Resolution terms, the IE Administrator may implement additional long-term remedies or actions with respect to the Parties and/or WMU community that are intended to stop the Discrimination, Harassment, Sexual Misconduct, and/or Other Prohibited Conduct, remedy the effects, and prevent its recurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Course and registration adjustments, such as retroactive withdrawals
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for Employees
- Provision of campus safety escorts
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the IE Administrator's discretion, the Parties may be provided certain long-term support or measures even if no Policy violation is found.

When no Policy violation is found, the IE Administrator will address any remedies for Respondent to ensure no effective denial of educational access.

WMU will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair WMU's ability to provide these services.

### **11. Failure to Comply with Sanctions and/or Disciplinary Actions**

All Respondents are expected to comply with the assigned sanctions, disciplinary actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-maker, including the Appeal Decision-maker or the Informal Resolution agreement.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from WMU.

Supervisors are expected to enforce completion of required actions for their Employees.

A suspension imposed for non-compliance with required actions will only be lifted when compliance is achieved to the IE Administrator's satisfaction.

## **12. Recordkeeping**

In implementing the Policy and Procedures, the IE Administrator will maintain records of all allegations, investigations, and Resolutions, indefinitely, or as required by federal or state law or institutional policy.

## **13. Disability Accommodations and Other Support**

Western Michigan University is committed to providing reasonable accommodations and support to qualified Students, Employees, or others with disabilities to ensure equal access to WMU's Civil Rights Grievance Process.

Anyone needing such accommodations or support should contact the IE Administrator, who will work with Disability Services for Students and other administrative offices as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

WMU will address other reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout a resolution process
- Other support as deemed reasonable and necessary to facilitate participation in a resolution process

## **14. Federal Timely Warning Obligations**

WMU issues a timely warning for crimes that occur on WMU's Clery Act geography that are reported to WMU Public Safety directly, by a Campus Security Authority, or a local police agency that in the judgment of the Director of Public Safety or their designee constitutes a

serious or continuing threat of bodily harm or danger to members of WMU community. The timely warning is issued through WMU Alert or the University email system. The warning may also be posted on the GoWMU website as a campus announcement or in the Western Herald Student newspaper.

WMU will ensure that Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions considering the potential danger.

## **APPENDIX A: DEFINITIONS**

The following definitions apply to the Nondiscrimination Policy, the Sexual Misconduct Policy, and the Civil Rights Grievance Procedures:

- **Advisor.** Any person chosen by a party, who may accompany the party to all meetings related to a resolution process, advise the party on that process. A **Hearing Advisor**, performs the same functions but also conduct questioning for the party at the hearing.
- **Appeal Decision-maker.** The person or panel who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs disciplinary action(s) accordingly.
- **Day.** All references to days in the Policy refer to calendar days unless specifically noted.
- **Decision-maker.** The person or panel who reviews evidence, determines relevance, and makes the Final Determination of whether the alleged conduct has violated the Policy. A **Hearing Official** is a specific type of Decision-maker that facilitates a hearing.
- **Disciplinary Authority.** The person or group with authority to make determinations of sanctions and/or disciplinary actions on behalf of WMU.
- **Directly Related Evidence.** Evidence connected to the allegations, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and which cannot be relied upon by the Decision-maker. Compare to **Relevant Evidence** below.
- **Education Program or Activity.** Locations, events, or circumstances where WMU exercises substantial control over both Respondent and the context in which the Discrimination, Discriminatory Harassment and/or Sexual Misconduct occurs. Also includes any building owned or controlled by a Student organization that WMU officially recognizes.
- **Title IX Sexual Harassment Resolution/Process A.** WMU's method of formal resolution to address allegations, which complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45) and the Violence Against Women Act amendments to the Clery Act (34 C.F.R. § 668).
- **Investigator.** The person(s) WMU authorizes to gather facts about an alleged violation of the Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report of Relevant Evidence and a file of Directly Related Evidence.
- **Reasonable Person.** An objective standard used in the Policy definitions to compare conduct of a hypothetical reasonable person; under similar circumstances and with similar identities.
- **Relevant Evidence.** Evidence that tends to prove or disprove any element of an offense or any issue materials to resolving a complaint.

## **APPENDIX B: EXAMPLES/CHARACTERISTICS OF PROHIBITED BEHAVIORS**

The following is provided to aid understanding of the Covered Behaviors defined in the Sexual Misconduct Policy. Examples and characteristics are not limited to this list.

### **Sexual Harassment**

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- Does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom Complainant has an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.
- May occur in the classroom, in the workplace, in residential settings, or in any other context.
- May be a one-time event or may be part of a pattern of behavior.
- May be committed in the presence of others or when the parties are alone.
- May affect Complainant and/or third parties who witness or observe harassment.

Sexual harassment may include a severe, persistent or pervasive pattern of unwelcome conduct that includes one or more of the following:

- Sexual Assault, Stalking, Non-Consensual Sexual Contact, Sexual Exploitation, and Intimate Partner Violence, as defined in the Policy.
- Physical conduct:
  - Unwelcome touching, sexual/physical assault, impeding, restraining, or blocking movements
- Verbal conduct:
  - Making or using derogatory comments, epithets, slurs or humor
  - Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations
  - Objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes
- Visual conduct:
  - Leering, making sexual gestures, displaying of suggestive objects or pictures, cartoon or posters in a public space or forum
  - Severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading sexually oriented images that are not pedagogically appropriate

- Written conduct:
  - letters, notes or electronic communications containing comments, words, or images described above
- Quid pro quo conduct:
  - Direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists
  - Offering employment benefits in exchange for sexual favors
  - Making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose
  - Making or threatening reprisals after a negative response to sexual advances

### **Sexual Exploitation**

- Surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and Consent of all parties involved
- Non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity, or distributing such without the knowledge and Consent of all parties involved
- Exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances
- Knowingly exposing another individual to a sexually transmitted disease or virus without their knowledge
- Sex-based bullying
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity

### **Retaliation**

- May be committed by any individual or group of individuals.
- Retaliation may take many forms, including threats, intimidation, pressuring, continued abuse, violence, other forms of harm to others.
- Retaliation may also occur by moving someone to a less desirable workspace, altering work hours, removing or limiting privileges.

## **APPENDIX C: STATEMENT OF THE PARTIES' RIGHTS**

### **Under the Policies and Procedures, the Parties have the right to:**

- An equitable investigation and Resolution of all credible allegations of prohibited Discrimination, Discriminatory Harassment, and Sexual Misconduct, when reported in good faith to WMU officials
- Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions
- Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional reports or Formal Complaints) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations
- Be informed in advance of any WMU public release of information regarding the allegation(s) or underlying incident(s), whenever possible
- Have all personally identifiable information protected from WMU's release to the public without consent, except to the extent permitted by law
- Be treated with respect by WMU officials
- Have WMU Policy and Procedures followed without material deviation.
- Voluntarily agree to resolve allegations under the Policy through Informal Resolution without WMU pressure, if Informal Resolution is an approved option
- Not be discouraged by WMU officials from reporting Discrimination, Discriminatory Harassment, and Sexual Misconduct to both on-campus and off-campus authorities
- Be informed of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) for WMU to assist in notifying such authorities, if the party chooses. This also includes the right not to be pressured to report
- Have WMU law enforcement and/or other WMU officials respond promptly to alleged Policy violations
- Be informed of available supportive measures and assistance in changing academic, living, and/or employment situations after an alleged incident of Discrimination, Discriminatory Harassment, and Sexual Misconduct if such changes are reasonably available. No report or Formal Complaint, or investigation, either institutional or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - Relocating a residential Student's housing to a different on-campus location
  - Assistance from WMU staff in completing the relocation
  - Changing an Employee's work environment (e.g., reporting structure, office/workspace relocation)

- A WMU-implemented no-contact order or a no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct
- Transportation assistance
- Visa/immigration assistance
- Rescheduling or adjusting an exam, paper, and/or assignment
- Receiving an incomplete in, or a withdrawal from, a class
- Transferring class sections
- Temporary withdrawal/leave of absence
- Campus safety escorts
- Alternative course completion options
- Have WMU maintain supportive measures for as long as necessary, ensuring they remain confidential, provided confidentiality does not impair WMU's ability to provide the supportive measures or comply with the law
- Receive sufficiently advanced written notice of any WMU meetings or interviews
- Meetings, interviews, and/or hearings that are closed to the public
- Identify and have the Investigator(s), Advisors, and/or Decision-maker question relevant available witnesses
- Provide the Investigator(s)/Decision-maker with a list of questions that, if deemed relevant by the Investigator(s)/Decision-maker, may be asked of any party or witness
- Have Complainant's inadmissible sexual predisposition/prior sexual history or any party's irrelevant character evidence excluded by the Decision-maker.
- Review the Relevant and Directly Related Evidence (if applicable) obtained and respond to that evidence
- A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record
- (For Title IX Resolutions) Receive a copy of all Relevant and Directly Related Evidence (if applicable) obtained during the investigation, subject to privacy limitations imposed by federal and state law, and a ten (10) calendar day period to review and comment on the evidence
- (For Title IX Resolutions) Receive a copy of the Final Investigation Report, including all factual, Policy, and/or credibility analyses performed, and to have at least ten (10) calendar days to review and comment on the report prior to a hearing
- Be informed of the names of all witnesses whose information will be used to make a Finding, in advance of that Finding, when relevant
- Regular status updates on the investigation and/or resolution process
- Have reports of alleged Policy violations addressed by individuals who have received relevant training as required
- Preservation of confidentiality/privacy, to the extent possible and permitted by law

- Petition that any WMU representative in the process be recused on the basis of disqualifying bias and/or a conflict of interest
- Be able to select an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process
- Apply the appropriate standard of evidence, preponderance of the evidence (more likely than not; greater than 50%), to make a Finding and Final Determination after an objective evaluation of all Relevant Evidence.
- (For Title IX Resolutions) Be present, including presence via remote technology, during all testimony given and evidence presented during any hearing
- (For Title IX Resolutions) Be promptly informed of the resolution process Finding(s) and sanction(s) (if any) and be given a detailed rationale for the decision (including an explanation of how credibility was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay)
- Be informed in writing of when a WMU decision is considered final and any changes to the Final Outcome that occur post outcome letter delivery
- Be informed of the opportunity to appeal the Finding(s) and sanction(s) and the procedures for doing so in accordance with WMU's appeal grounds
- A fundamentally fair resolution as defined in the Procedures

## **APPENDIX D: PRESERVATION OF EVIDENCE**

The preservation of evidence is critical to University Civil Rights Grievance Resolutions, potential criminal prosecution and to obtaining restraining/protective orders and is particularly time sensitive. WMU will inform Complainant of the importance of preserving evidence by taking actions such as the following, if timely:

### **Sexual Assault**

- Seek forensic medical assistance at the Kalamazoo YWCA or nearest hospital, ideally within 120 hours of the incident (sooner is better)
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container (if provided by law enforcement)
- Seeking medical treatment can be essential even if it is not for the purpose of collecting forensic evidence:
  - To assess and treat physical trauma;
  - To receive treatment to prevent sexually transmitted infections and pregnancy, if applicable
- Do not clean or straighten up the area where the assault occurred

### **Stalking/Dating Violence/Domestic Violence/Discriminatory Harassment/Discrimination**

- Evidence in the form of text and voice messages will be lost in most cases if a party or witness changes their phone number
- Make a secondary recording of any voice messages and/or save the audio files to a cloud server
- Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook)
- Add the received date/time to each message screenshot, when possible.
- Save copies of e-mail and social media correspondence, including notifications related to account access alerts
- Take time-stamped photographs of any physical evidence including notes, gifts, etc. in place when possible
- Save copies of any messages, to include those showing any request for no further contact
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible
- If changing devices, make sure to transfer any files needed to the new device
- Do not clean or straighten up the area where violence occurred

## **APPENDIX E: TITLE IX SEXUAL HARASSMENT DISMISSALS<sup>7</sup>**

### **Mandatory Dismissals**

WMU **must** dismiss a Formal Complaint or any allegations therein if, at any time during the assessment, investigation or hearing, it is determined that:

- The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined, even if proven
- The conduct alleged did not occur in WMU's Education Program or Activity (including buildings or property controlled by recognized Student organizations) and/or WMU does not have control of Respondent
- The conduct alleged did not occur against a person in the United States
- The person alleging Sex-based conduct is not participating in or attempting to participate in WMU's Education Program or Activity at the time of filing the Formal Complaint, and based on the available information, the Title IX Coordinator has determined that they do not need to sign a Formal Complaint on behalf of WMU.

### **Discretionary Dismissals**

WMU **may** dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein
- Respondent is no longer enrolled in or employed by WMU
- Specific circumstances prevent WMU from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein

A Complainant who decides to withdraw a Formal Complaint may later request to reinstate it or refile it.

Upon any dismissal, WMU will promptly and simultaneously send the Parties written notice of the dismissal and the rationale for doing so.

This dismissal decision is appealable by any party. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.

When the Title IX Coordinator has signed a Formal Complaint and later determines that the basis for signing is no longer compelling, the Title IX Coordinator may rescind the Formal Complaint and notify the Parties accordingly. This is not a dismissal, and there is no opportunity to appeal because Complainant may still file a Formal Complaint if they wish to, in most circumstances.

### **Appeal of Dismissal**

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<sup>7</sup> These dismissal requirements are mandated by 34 CFR § 106.45.

The Parties may appeal a decision to dismiss or not to dismiss their Formal Complaint. All dismissal appeal requests must be filed within five (5) calendar days of the notification of the dismissal decision.

A dismissal may be appealed on the following grounds:

- A procedural irregularity affected the outcome of the matter
- New evidence that was not reasonably available at the time the determination regarding dismissal was made, that could affect the outcome of the matter
- 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 specific Complainant or Respondent that affected the outcome of the matter

The appeal should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from one or more Parties, the Title IX Coordinator will share the request and supporting documentation with all other Parties and provide five (5) calendar days for other Parties and the Title IX Coordinator to respond to the request. At the conclusion of the response period, the Title IX Coordinator will forward the request, as well as any response provided by the other Parties and/or the Title IX Coordinator to the Dismissal Appeal Decision-maker for consideration.

If the appeal request does not provide information that meets the grounds in the Policy, the Dismissal Appeal Decision-maker will deny the request, and the Parties, their Advisors, and the Title IX Coordinator will be notified in writing of the denial and the rationale.

If any of the asserted grounds in the appeal satisfy the grounds described in the Policy, then the Dismissal Appeal Decision-maker will notify all Parties and their Advisors, and the Title IX Coordinator of their decision and rationale in writing. The effect will be to reinstate the Complaint.

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Decision-maker has seven (7) calendar days to review and decide on the appeal, though extensions can be granted at the Title IX Coordinator's discretion, and the Parties will be notified of any extension.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.

The Dismissal Appeal Decision-maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

## **APPENDIX F: NOTICE OF INVESTIGATION AND ALLEGATIONS (NOIA)**

An IE Administrator will provide the Parties written Notice of the Investigation and Allegations (the “NOIA”) upon commencement of the Formal Grievance Process. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

Depending on the resolution process, the NOIA may include:

- A meaningful summary of all allegations
- The names of the involved Parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that WMU presumes Respondent is not responsible for the reported misconduct unless and until the evidence supports a Final Determination that the Policy has been violated
- The name(s) of the Investigator(s), along with a process to notify an IE Administrator of any conflict of interest that the Investigator(s) may have in advance of the interview process
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity during the review and comment period to inspect and review all Relevant and Directly Related Evidence obtained
- A statement of the potential sanctions/disciplinary actions that could result
- A statement about WMU’s policy on Retaliation
- Information about process confidentiality
- A statement informing the Parties that WMU’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the Formal Resolution Process
- Information about how a party may request disability accommodations or other support assistance during the Formal Grievance Process
- Instruction to preserve any evidence that is directly related to the allegations
- A statement that Parties who are members of a union are entitled to union representation throughout the process