

**North Carolina Wesleyan University Grievance Procedures for Sex-based Harassment  
Complaints for Students and Employees  
(Title IX Policy)**

**Published: January 10, 2025**

**Effective Date and Changes to Procedure Based on Court Rulings and Legal Challenges or Changes in Law or Regulation**

On January 9, 2025 a federal district court in Kentucky vacated the 2024 Title IX regulations. This action means that the 2020 Title IX regulations will now apply. As such, this Grievance Procedure applies to incidents that occurred on or after August 14, 2020.

Should any portion of the January 9, 2025 ruling be stayed or held invalid by a court of law, the revoked or invalid elements will be deemed revoked as of the publication date of the opinion or order from the Court and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by the date of the opinion or order publication by the Court. North Carolina Wesleyan University will update this Grievance Procedure as soon as practicable to reflect any court rulings or changes that invalidate parts of the Grievance Procedure, if applicable.

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North Carolina Wesleyan University is committed to providing a safe living, learning, and working environment that is free from harassment and discrimination. North Carolina Wesleyan University believes that all people should be treated with respect and dignity and that we are all accountable for our actions. As such, North Carolina Wesleyan University does not tolerate sexual and gender discrimination, harassment, and misconduct.

Title IX of the Education Amendments of 1972 (hereafter referred to as “Title IX”) prohibits discrimination on the basis of sex. Although it is a gender-equity law, Title IX also applies to incidents of sexual harassment, which includes sexual assault, that prevent a student from full and equitable participation in educational programs and activities. North Carolina Wesleyan University will respond promptly to all complaints filed under this policy.

**Title IX Coordinator**

Jason Modlin, Ed.D.

Dean of Students

111 Hardees Student Union

252.985.5404

[jmodlin@ncwu.edu](mailto:jmodlin@ncwu.edu)

The Title IX Coordinator has oversight of the University’s compliance with Title IX regulations and works with the individuals listed below to ensure all complaints are handled promptly and equitably. The Title IX Coordinator has oversight of the reporting, investigating and resolving of all complaints involving students, faculty, and/or staff. The Title IX Coordinator also has oversight of training for students, faculty, and staff along with education and prevention efforts.

Darrell Whitley, Deputy Title IX Coordinator for Human Resources  
Director of Human Resources  
141 Braswell  
252.985.5105  
[dwhitley@ncwu.edu](mailto:dwhitley@ncwu.edu)

Carol Carson, Deputy Title IX Coordinator for Athletics  
Assistant Athletic Director for Medical Services  
110B Taylor Center  
252.985.5221  
[ccarson@ncwu.edu](mailto:ccarson@ncwu.edu)

## **I. Purpose and Scope of Policy**

This policy prohibits behaviors which constitute sexual or gender-based harassment or discrimination, including sexual assault, interpersonal violence, and stalking. This policy is applicable to all members of the North Carolina Wesleyan University community, including students, employees, and non-students (e.g. visitors, independent contractors, etc.). Members of the University community are expected to take responsibility for their behavior.

North Carolina Wesleyan University is committed to maintaining a campus environment that is free from all forms of discrimination for all community members. Discrimination for any reason is incompatible with the values of North Carolina Wesleyan University and will not be tolerated. All reports under this policy will be assessed for severity and the threat it poses to the campus community, and the University will respond accordingly. Individuals found in violation of this policy may face disciplinary sanctions up to and including expulsion from the University or termination of employment.

This policy addresses all forms of sex-based harassment and retaliation related to reports under this policy. Violations of sex-based harassment are prohibited by all members of the campus community, regardless of their status.

This policy applies for students at the date of enrollment and continues until the student withdraws or graduates, and includes periods between semesters and semester breaks. For employees, the policy applies on the date the employee accepts employment and continues until employment ceases. For volunteers, the policy applies once the volunteer receives clearance and continues until the volunteer duties are completed.

This policy addresses sex-based harassment committed by or against students, employees, vendors, visitors, and volunteers when:

- The conduct is alleged to have occurred in the United States;
- The conduct is alleged to have occurred in a location, event, or circumstance over which NC Wesleyan University exercised substantial control over both the respondent and the context in which the sexual harassment occurred. This

includes any building owned or controlled by NC Wesleyan University or a student organization that is officially recognized by the University, as well as conduct occurring during the course of University-related travel or off-campus programs such as academic field trips, student events, athletic events, etc.

This policy also applies to behaviors conducted via electronic means including email, social media, texts, or other online formats.

## **II. Notice of Non-Discrimination**

As an institution with core values that include integrity and respect, North Carolina Wesleyan University is committed to ensuring that all members of our campus community are treated fairly and equitably. To that end, we comply with all regulations under Title IX and other federal and state laws that prohibit discrimination which are applicable to higher education institutions.

North Carolina Wesleyan University does not discriminate on the basis of race, religion, creed, national or ethnic origin, age, sex, sexual orientation, marital status or disability in administration of its educational policies, admissions policies, scholarship and loan programs, athletic and other school administered programs.

Inquiries regarding this policy or Title IX can be referred to:

Jason Modlin, Title IX Coordinator  
Dean of Students  
111 Hardees Student Union  
252.985.5404  
[jmodlin@ncwu.edu](mailto:jmodlin@ncwu.edu)

Or:

Office for Civil Rights Washington, DC  
1.800.421.3481  
OCR@ed.gov  
<https://ocrcas.ed.gov/contact-ocr>.

## **III. Prohibited Conduct**

**1. *Sex-Based Harassment*** means sexual harassment and other harassment on the basis of sex, including pregnancy and related conditions, that is:

(a) *Quid pro quo harassment*. An employee, agent or other person authorized by North Carolina Wesleyan University's Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(b) *Hostile Environment harassment*. Unwelcome sex-based conduct that, based on the totality of the circumstances, a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access in North Carolina Wesleyan University's Education Program or Activity (i.e., creates a Hostile Environment). Whether a Hostile Environment has been created is a fact-specific inquiry that includes consideration of the following: (i) the degree to which the conduct affected the Complainant's ability to access North Carolina Wesleyan University's Education Program or Activity; (ii) the type, frequency, and duration of the conduct; and (iii) the location of the conduct and the context in which the conduct occurred.

(c) *Sexual Assault* (as defined in the Clery Act, 20 U.S.C. 1092(f)) means any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent;

(d) *Dating Violence* (as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act) means any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

(e) *Domestic Violence* means any felony or misdemeanor crimes committed by a person who: (A) is a current or former partner of the victim under the family or Domestic Violence laws of North Carolina, or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shared a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or Domestic Violence laws of North Carolina; or

(f) *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress.

## **2. Retaliation**

Includes any act of intimidation, threats, coercion or other forms of discrimination against an individual for exercising rights under this policy.

*From the NC Wesleyan Code of Student Conduct:*

**Retaliation** – Engaging, encouraging others, or directing others in an adverse action or threat of an adverse action against a complainant, respondent, or any individual or group of individuals involved in the complaint, investigation, and/or resolution of an allegation of a violation of University's Code of Student Conduct, Title IX policy, or other University policy; including any individual who attempts to intervene, prevent, or report behavior prohibited by these policies. Retaliation can be committed by an individual or group of individuals, not just a complainant or respondent. Examples of

retaliation include, but are not limited to, threats, intimidation, pressuring, continued harassment, violence, or other forms of harm to others.

Acts will be considered retaliatory if they are made in response to a good faith disclosure of real or perceived University-related misconduct, participation in an investigation or resolution of such misconduct, or the bystander intervention of such misconduct, and a reasonable person would be deterred from reporting or participating in the resolution process for misconduct covered under this policy.

All members of the University community, including students, faculty, and staff, who have good-faith concerns regarding possible sexual harassment, discrimination, and misconduct are expected to report these concerns to the Title IX Coordinator. Anyone who engages in retaliation will be subject to discipline in accordance with the University's Retaliation policy and the Student Code of Conduct. The University will act to stop acts of retaliation, remedy the effects for victims, and sanction individuals found responsible for these acts. The University, through Human Resources for employees and the Dean of Students for students, may take immediate administrative actions to stop such acts. The individual accused of retaliation will receive notice of the allegation and given the opportunity to be heard before final disciplinary action is taken. The exercise of right protected by the First Amendment does not constitute retaliation. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.

#### **IV. Definitions**

1. **Complainant** – a Student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment as defined in this Grievance Procedure and who was participating or attempting to participate in North Carolina Wesleyan University's Education Program or Activity.
2. **Respondent** – means a person who is alleged to have violated North Carolina Wesleyan University's prohibition on Sex-Based Harassment.
3. **Formal Complaint** – A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.

A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the school.

‘Document filed by a complainant’ means a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by the school) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a grievance process, and must comply with requirements for Title IX personnel to be free from conflicts and bias.

4. **Supportive Measures/Remedies** - means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to: (1) restore or preserve that Party’s access to North Carolina Wesleyan University’s Education Program or Activity, including measures that are designed to protect the safety of the Parties or North Carolina Wesleyan University’s educational environment; or (2) provide support during North Carolina Wesleyan University’s Grievance Procedure for Sex-Based Harassment or during the informal resolution process.
5. **Bystander**- Individuals who observe possible sexual harassment, discrimination, and misconduct and have the opportunity to intervene. Bystanders may report possible sexual harassment, discrimination, and misconduct (see “Reporting”). Responsible employees which includes faculty and staff are required to report.
6. **Privacy** – Information shared related to a report of sex-based harassment will be shared only with University employees who have a need to know in order to investigate or otherwise resolve a formal complaint. Care will be taken to comply with the requirements of the Family Educational Rights and Privacy Act (FERPA) and other state and federal laws.
7. **Confidentiality** – Information shared related to a report of sex-based harassment will not be shared with anyone else without the express, written consent of the individual. Confidential resources at the University (*see Confidential Resources* definition) are the only individuals on campus who may guarantee confidentiality. University Community members desiring confidentiality should speak first with a confidential resource.
8. **University** – North Carolina Wesleyan University
9. **Confidential Resources**- Employees at the University who are permitted to guarantee confidentiality. These include staff in the Health Services Center: Health Center (252.985.5186) or the Counseling Center (252.985.5369) and the University Chaplain (252.985.5223).

10. **Responsible Employees** – North Carolina Wesleyan University faculty and staff, including residence life staff, who are not designated as confidential resources. While we take the wishes of the complainant into strong consideration, reports of sexual harassment, discrimination, and misconduct made to a responsible employee must be reported to the University's Title IX Coordinator.
11. **University Community** – Students, employees, visitors, and independent contractors of North Carolina Wesleyan University.
12. **Student** - means a person who has gained Admission. This includes a person against whom an allegation of policy violation is made but who withdraw prior to the completion of the Student Conduct Process, who is not officially enrolled for a particular term but who has a continuing relationship with the University, or who has been notified of their acceptance for admission but has not yet matriculated.

## **V. Consent: Yes means Yes**

Consent means a knowing, voluntary, and mutual decision among all participants to engage in a specific sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Consent. The definition of Consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent cannot be gained by force, coercion, or manipulation.
- Use of alcohol or drugs may impair an individual's capacity to freely consent and may render an individual incapable of giving consent.
- Consent may not be implied by silence or any other absence of active resistance.
- Prior consent does not imply consent to future sexual acts.
- Consent to one type of sexual act does not give consent to another type of sexual act.
- Individuals with a previously intimate relationship do not automatically give initial or continuing consent to sexual activity. Even within the context of a relationship, mutual consent must be established before engaging in sexual activity.
- Consent may be withdrawn by either party at any time before or during the sexual activity. Withdrawal should be communicated clearly by words or actions that clearly indicate a desire to cease the activity.
- Consent cannot be given by the following persons:
  - \* Individuals who are mentally incapacitated at the time of the sexual contact in a manner that prevents him or her from understanding the nature or consequences of the sexual act involved;
  - \* Individuals who are asleep;
  - \* Individuals who are intoxicated and under the influence of drugs or alcohol;
  - \* Individuals who are unconscious or otherwise physically helpless; and
  - \* Minors (individuals under the age of 18).

Note: Being intoxicated or otherwise under the influence of drugs or alcohol is NEVER an excuse for sex-based harassment, nor does it remove the responsibility to gain consent for sexual activity. The test of whether an individual should know about another's incapacitation is whether a reasonable, sober person would know about the incapacitation. A respondent cannot rebut a sex-based harassment charge merely by arguing that he or she was drunk or otherwise impaired and, as a result did not know that the other person was incapacitated.

An individual who is passed out or unconscious as a result of the consumption of alcohol or drugs is physically helpless and is unable to give consent.  
*Immediate medical attention should be summoned for an individual found to be in this state (see Amnesty policy).*

**Yes mean yes.** This means that affirmative consent should be freely given by all participants, without coercion or duress, before any sexual activity occurs.

## **VI. Resources for Complainants and Respondents**

The University encourages all who have witnessed or believe they have been a victim of sexual discrimination, including assault, to report the incident promptly. However, the University also recognizes that it may be difficult to discuss such incidents. The University will support complainants through the process. The University will provide certain policies and resources to ensure a complaint can be properly investigated and resolved. Once a respondent is identified, she or he will also be provided with resources as support through the process.

**Confidential Resources:** While all persons receiving a report of sexual harassment, discrimination, and misconduct understand the desire to keep information confidential, maintaining confidentiality is not always possible (*see Privacy and Confidentiality definitions*). The only individuals at North Carolina Wesleyan University permitted to guarantee confidentiality are the Director of Counseling and Accessibility Services (252.985.5369), the Counselor (252.985.5241), the University Chaplain (252.985.5223), and the Director of Health Services (252.985.5186). These resources may be consulted at any time, including prior to making an official report to the University or law enforcement officials. To the extent possible, the University will respect an individual's request for confidentiality; however, the request for confidentiality will be weighed against the University's obligation to act on information it has received in order to provide a safe campus environment. At all times, the University will act to protect a student's privacy.

**Assistance and support for complainants of sex-based harassment:** North Carolina Wesleyan University recognizes the importance of assisting a member of the University community who is a complainant of sexual violence in regaining a sense of personal control. In this respect, several University departments coordinate resources to offer services to a complainant and others upon whom the sexual harassment, discrimination, and misconduct might have had an impact.

**Immediate medical assistance:**

Emergency Services (EMS, Fire, Police)	911
UNC Nash Hospital/ SARN (Sexual Assault Response Nurse)	(252) 962-8000

**Victim Assistance and Support**

My Sister's House (Domestic Abuse)	(252) 462-0366 (252) 459-3094 <a href="http://www.mshnc.org">www.mshnc.org</a>
National Rape Hotline	(800) 656-HOPE (4673)
National Domestic Violence Hotline	(800) 799-SAFE (7233) <a href="http://www.thehotline.org">www.thehotline.org</a>

**Health, Mental Health, and Counseling Services:**

Counseling Center	(252) 985-5369
Employee Assistance Program (employees only)	(Contact Human Resources)

**Campus Offices**

Financial Aid	(252) 985-5293
Immigration & Visa Assistance	(252) 985-5124

**Gather information:**

If you need more information about filing a complaint, campus policies, rights, reporting and resources, contact:

Title IX Coordinator – Dr. Jason Modlin	(252) 985-5404
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**Wrongful allegation:** It is a violation of this policy to knowingly bring a false complaint under this policy. However, failure to prove a claim of sexual harassment, discrimination, and misconduct does not alone constitute proof of a false and/or malicious accusation. Individuals who make frivolous or false reports shall not be deemed to be acting in good faith.

**VII. Reporting****A. Campus Reporting**

The University encourages reporting of violations or potential violations of the Title IX policy. We also encourage all individuals to seek appropriate medical or mental health assistance when needed immediately following an incident of sex-based harassment. Additionally, law enforcement should be contacted regardless of whether the individual seeks to pursue criminal charges. This is to preserve evidence which may support the report to the University, a protective or no-contact order, or a future report to law enforcement in the pursuit of criminal charges.

Any person may report sex discrimination, including Sex-Based Harassment (whether or not the person reporting is the person alleged to be the victim of the conduct that may constitute sex discrimination or Sex-Based Harassment), in person, by mail, by telephone, or by electronic

mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

***Contact Information for the Title IX Coordinator at North Carolina Wesleyan University:***

Name: Jason Modlin, Ed.D.  
Title: Dean of Students  
Office Address: 3400 N. Wesleyan Blvd.  
Hardees Student Union, Suite 111  
Rocky Mount, NC 27804  
Email Address: [jmodlin@ncwu.edu](mailto:jmodlin@ncwu.edu)  
Telephone Number: 1-252-985-5404

Other members of the Title IX team include:

Darrell Whitley, Deputy Title IX Coordinator for Human Resources  
Director of Human Resources  
141 Braswell  
252.985.5105  
[dwhitley@ncwu.edu](mailto:dwhitley@ncwu.edu)

Carol Carson, Deputy Title IX Coordinator for Athletics  
Assistant Athletic Director for Medical Services  
110B Taylor Center  
252.985.5221  
[ccarson@ncwu.edu](mailto:ccarson@ncwu.edu)

At the time of reporting, the complainant need not decide how they want the report to be handled. The University will offer support to the complainant as described in this policy, including support in deciding how to handle the incident. The University will respect the complainant's autonomy in making the important decision on whether to proceed with a formal complaint and consider this when making a final determination as to whether a formal complaint is warranted.

The following officials at North Carolina Wesleyan University will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited by Title IX:

- Title IX Coordinator or designee(s);
- Officials with Authority to institute corrective measures under Title IX (this includes faculty, advisors, and administrators).

All other employees at North Carolina Wesleyan University that are not designated as Officials with Authority will provide the individual making the report with information on how to submit a complaint to the Title IX Coordinator should they wish to do so. This includes most athletic coaches and staff.

Individuals who are uncertain as to the role of the official to whom they are reporting should ask the official about their role *prior* to making a report.

The following officials at North Carolina Wesleyan University may provide confidentiality:

- Ms. Marlo Walker, Counselor  
[Mdwalker@ncwu.edu](mailto:Mdwalker@ncwu.edu)  
252-985-5369
- Ms. Jessica Brys-Wilson, Director of Health Services  
[jbrys@ncwu.edu](mailto:jbrys@ncwu.edu)  
252-985-5186
- Rev. Edwin Ferguson, Chaplain  
[Eferguson@ncwu.edu](mailto:Eferguson@ncwu.edu)  
252-985-5223

### **Deliberate Indifference Standard**

The University will respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means a response that is not clearly unreasonable in light of the known circumstances. As such, the University must:

- Offer supportive measures to the person alleged to be the complainant;
- Ensure the Title IX Coordinator promptly contacts the complainant confidentially to discuss the availability of supportive measures
- Consider the complainant's wishes with respect to supportive measures;
- Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint;
- Explain to the complainant the process for filing a formal complaint;
- Investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant or signed by the Title IX Coordinator;
- Affirm that a complainant's wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances;
- Dismiss, for the purposes of Title IX, any formal complaint that does not meet the definition of sexual harassment or did not occur in the school's education program or activity against a person in the United States. The

University may still address the allegations as it deems appropriate under the Code of Student Conduct.

Any individual reporting sex-based harassment may be assured that the University will assess each report and resolve it in a fair, impartial, and timely manner, as appropriate under the circumstances. All individuals may expect to be treated with respect and dignity. In all reports, the University will make an immediate assessment of any risk of harm to the University or to the broader campus community and will address those risks, including taking interim measures for the safety of the individuals involved and the campus community.

#### B. Anonymous Reporting

Any individual may make an anonymous report of sex-based harassment. An individual may report the incident without disclosing his or her name, identifying the respondent, or requesting any action. Depending on the extent of information available about the incident or the individuals involved, however, the University's ability to respond to an anonymous report may be limited.

The Title IX Coordinator or a Deputy Title IX Coordinator will receive the anonymous report and will determine any appropriate steps, including individual or community remedies as appropriate and in compliance with all federal and state legal obligations.

#### C. Reporting to Law Enforcement

The University encourages complainants to pursue criminal action for incidents of sex-based harassment that may also be crimes under state criminal statutes. Complainants have the right to notify or decline to notify law enforcement authorities. The University will assist a complainant, at the complainant's request, in contacting local law enforcement, filing a report, or obtaining a protective order. The University will cooperate with law enforcement agencies if a complainant decides to pursue the criminal process. Complainants have the right to participate or decline to participate in any investigation to the extent permitted under state or federal law.

Local law enforcement information:

Rocky Mount Police 252.972.1411

The University's policy, definitions, and burden of proof differ from those that apply in criminal law. A complainant may seek resolution through the University's complaint process, may pursue criminal action, may choose one but not the other, or may choose both. Neither law enforcement's determination regarding whether to prosecute a respondent nor the outcome of any criminal prosecution determines whether sex-based harassment has occurred in violation of this policy. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus.

## D. Reporting Considerations

### 1. Timeliness of Report, Location of Incident

Complainants and third-party witnesses are encouraged to report incidents of sex-based harassment as soon as possible in order to maximize the University's ability to respond promptly and effectively. However, there is no time limit on reporting violations of this policy. If the respondent is no longer a student or employee, the University may not be able to take disciplinary action against the respondent, but it will still seek to comply with its Title IX obligation by providing support for a complainant and taking steps to end the harassment, prevent its recurrence, and remedy its effects. An incident does not have to occur on campus to be reported to the University. Off-campus conduct that occurs in connection with University programs or events may also be covered, as may off-campus conduct that may have a continuing adverse effect on the complainant while on campus or other property owned or controlled by the University or in any University employment or education program or activity. The University will process all Title IX complaints regardless of where the conduct occurred to determine whether the conduct occurred in the context of its educational program or has continuing adverse effects on campus or in an off-campus program or activity.

### 2. Amnesty for Personal Use of Alcohol or Other Drugs

The University seeks to remove any barriers to reporting. It is in the best interest of this community that all individuals who have been the subject of sex-based harassment report the behavior to the University, and that witnesses share what they know. To encourage reporting, complainants, third-party witnesses, or respondents will not be subject to disciplinary action by the University for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. Students may be required to engage in non-disciplinary substance abuse or awareness measures.

### 3. Statement against Retaliation

Retaliation is a violation of University policy and will result in disciplinary action. See section III-2 above for more information.

### 4. False Reporting

The University takes the validity of information very seriously, as a charge of sex-based harassment may have severe consequences. A complainant who makes a report that is later found to have been intentionally false or made maliciously without regard for truth, or anyone proven to have acted in bad faith to intentionally give false information during the course of an investigation may be subject to disciplinary action. This provision does not apply to reports made in good faith, even if the facts

alleged in the report are not substantiated by an investigation and/or hearing decision. An allegation of false reporting cannot be investigated or heard until the underlying allegations have been resolved.

## 5. Protection of Minors and Mandatory Reporting of Suspected Child Abuse

Any persons employed by the University who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, are required to report the matter immediately to child protective services. The University also requires that the information be immediately shared with the Office of Public Safety so that the University can ensure timely compliance with this law and enhance the protection of children. The University will report all suspected child abuse and neglect, including sexual assault, to law enforcement. The University will act quickly regarding all suspected child abuse. For the purposes of this reporting obligation, a child is any individual under the age of 18, and the suspected abuse may involve physical, sexual, or other forms of abuse or neglect, regardless of the identity of the suspected perpetrator. The duty to report is triggered by reasonable suspicion or belief. There is no requirement that evidence of abuse be presented, nor is it the responsibility of any employee, student, or volunteer to investigate suspected child abuse on his/her own. The Department of Social Services and/or law enforcement authorities are best positioned to conduct any such investigation and make appropriate determinations. A report should be made as follows:

- If a child is in immediate danger, call the police (911).
- If there is no immediate danger, call Campus Security at (252.406.7928).

### E. Bystanders

A bystander is a person who (either directly or indirectly) has an opportunity to prevent or respond to a situation that they know to be damaging to another person or the community. The role of bystanders during acts of disruption, prejudice, or violence toward others and oneself (i.e., overconsumption of substances) may be either harmful or helpful, depending on the bystander's response. In cases of sexual violence where students are witnessing a peer consume harmful quantities of substances, abusive relationships, or cruel or bullying behavior toward others, failure to intervene in safe ways can be detrimental. Students are being asked to recognize that they always have a choice when they see situations that could potentially become violent or unsafe for those involved: to take a stand and call for help; report the behavior to someone in authority; take action to protect a potential victim; or they can stand by, remain passive, and take no action. The conversations that occur during the student conduct process will include an intention to raise awareness of the issues of the role of bystanders in the well-being and health of our community. For every incident that occurs on our campus, there are multiple levels of responsibility. This includes direct and indirect contributions to the situation. The University encourages all community members to take reasonable and prudent actions to prevent an act of sex-based harassment. Taking action to protect a potential victim may include direct

intervention when safe to do so, enlisting the assistance of friends, contacting law enforcement, or seeking assistance from a person in authority. Community members who assist under these circumstances will be supported by the University and protected from retaliation.

## **VIII. Report Assessment, Interim Measures, and Supportive Measures**

### **Report Assessment**

When receiving a report, the Title IX Coordinator ensures consistent application of this policy to all individuals to allow the University to respond promptly and equitably to eliminate the harassment, prevent its recurrence, and remedy its effects.

Complainants and respondents can expect the following under these procedures:

- Prompt and equitable resolution of allegations of sex-based harassment;
- Privacy in accordance with the policy and any legal requirements;
- Reasonably available interim measures;
- Freedom from retaliation for making a good faith report of sex-based harassment or participating in any proceeding under this policy;
- The responsibility to refrain from retaliation directed against any person for making a good faith report of sex-based harassment or participating in any proceeding under this policy;
- The responsibility to provide truthful information in connection with any report, investigation, or resolution of sex-based harassment under the policy;
- The opportunity to articulate concerns or issues about proceedings under the policy;
- Notice of any meeting or proceeding that the party may attend;
- The opportunity to have an advisor;
- Written notice of an investigation, including notice of potential policy violations;
- The opportunity to offer information, present evidence, and identify witnesses during an investigation;
- The right to participate or decline to participate in the complaint resolution process, with the acknowledgement that not participating, either totally or in part, may not prevent the process from proceeding with the information available;
- Equal access to information that will be used during resolution proceedings;
- Written notice of any extension of timeframes; and
- Written notice of the outcome of any disciplinary proceeding.

The initial assessment will include an evaluation of the safety of the individual and of the campus community. During the initial assessment, the University will ensure that the complainant receives a written explanation of available resources and options. At the conclusion of the initial assessment, if the complainant has expressed a desire to proceed with an investigation, the University will begin the process. If the complainant has requested not to proceed with an investigation, the Title IX

Coordinator with others as necessary, will determine the appropriate resolution.

### **Supportive Measures**

Complainants who report allegations of Sex-Based Harassment have the right to receive Supportive Measures from North Carolina Wesleyan University regardless of whether they file a Complaint. Supportive Measures are non-disciplinary and non-punitive. Supportive Measures may vary depending upon what is reasonably available at North Carolina Wesleyan University.

As appropriate, Supportive Measures may include without limitation:

- Counseling services
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services, as available
- Restrictions on contact applied to one or more Parties (no contact orders)
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Training and education programs related to Sex-Based Harassment

Supportive Measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties or North Carolina Wesleyan University's educational environment, or to provide support during North Carolina Wesleyan University's Sex-Based Harassment grievance procedure under this policy or during informal resolution under this procedure.

North Carolina Wesleyan University may modify or terminate Supportive Measures at the conclusion of the grievance procedure or at the conclusion of the informal resolution process, or may continue them beyond that point within North Carolina Wesleyan University's discretion.

North Carolina Wesleyan University will not disclose information about any Supportive Measures to persons other than the person to whom they apply, including informing one Party of Supportive Measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party's access to North Carolina Wesleyan University's education program or activity, or there is an exception that applies, such as:

- North Carolina Wesleyan University has obtained prior written consent from a person with the legal right to consent to the disclosure;
- When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;

- To carry out the purpose of the policy when it is necessary to address conduct that reasonably may constitute Sex-Based Harassment under Title IX in North Carolina Wesleyan University's education program or activity;
- As required by Federal law, federal regulations, or the terms and conditions of a federal award; or
- To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, or its implementing regulations, 34 CFR Part 99).

### **Process for Review of Supportive Measures**

North Carolina Wesleyan University provides for a Complainant or Respondent to seek modification or reversal of North Carolina Wesleyan University's decision to provide, deny, modify or terminate a Supportive Measure. Grounds for challenge of Supportive Measures include, but are not limited to:

- Whether a Supportive Measure is reasonably burdensome;
- Whether a Supportive Measure is reasonably available;
- Whether a Supportive Measure is being imposed for punitive or disciplinary reasons;
- Whether the Supportive Measure is being imposed without fee or charge; and
- Whether the Supportive Measure is effective in meeting the purposes for which it is intended, including to restore or preserve access to the Education Program or Activity, provide safety, or provide support during the Grievance Procedure.

Request for a modification or reversal of a supportive measure must be timely and should be submitted within 1 business day by email to the Title IX Coordinator. North Carolina Wesleyan University will conduct a fact specific inquiry into timeliness.

This review will be conducted by an impartial employee of North Carolina Wesleyan University, who did not make the challenged decision on the original supportive measure request. The impartial employee of North Carolina Wesleyan University who makes this determination will have the authority to modify or reverse the decision if that impartial employee determines that the decision to provide, deny, modify or terminate the supportive measure was inconsistent with the procedures as outlined above for providing Supportive Measures in accordance with the Title IX regulations.

Parties are only allowed to challenge their own individual Supportive Measures. Challenges by one Party will not be heard to Supportive Measures afforded to the opposite Party, unless that supportive measure directly impacts the Party making such challenge (i.e., two-way no contact orders).

## **Emergency Removal**

North Carolina Wesleyan University retains the authority to remove a Respondent from all or part of North Carolina Wesleyan University's education program or activity on an emergency basis, where North Carolina Wesleyan University (1) undertakes an individualized safety and risk analysis, and (2) determines that an imminent and serious threat to the health or safety of a Complainant or any Students, employees, or other persons arising from the allegations of Sex-Based Harassment justifies removal.

North Carolina Wesleyan University will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. All challenges to an Emergency Removal will be heard by the University Provost.

The hearing officer who hears a challenge to an emergency removal must not be involved in any decision regarding responsibility or appeal of a determination.

Emergency removals will not be considered Relevant evidence that can be considered in reaching a determination of whether Sex-Based Harassment occurred.

## **Administrative Leave**

North Carolina Wesleyan University retains the authority to place a non-Student employee Respondent on administrative leave during the Title IX Grievance Procedures, consistent with the Personnel Policy Manual and/or Faculty Handbook.

**Note on Student employees:** when a Complainant or Respondent is both a Student and an employee of North Carolina Wesleyan University, North Carolina Wesleyan University must make a fact-specific inquiry to determine whether these procedures apply to that Student employee. North Carolina Wesleyan University will consider if the Complainant or Respondent's primary relationship with North Carolina Wesleyan University is to receive an education and whether the alleged Sex-Based Harassment occurred while the Party was performing employment-related work.

## **Complainant Autonomy/Request to Not Proceed**

In the event that a complainant does not wish to proceed with an investigation or a complaint, the Title IX Coordinator will respect the complainant's wish unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances. If the allegations in a formal complaint do not meet the definition of sexual harassment, or did not occur in the school's education program or activity against a person in the United States, the University must dismiss such allegations for purposes of Title IX but may still address the allegations in any manner the University deems appropriate under the school's own code of conduct. The Title

IX Coordinator will assess any barriers to proceeding and will reassure the complainant that Title IX prohibits retaliation and that the University will take strong responsive action to protect the complainant.

In determining whether the University can comply with a complainant's request not to proceed, the Title IX Coordinator will consider a range of factors relative to the safety and welfare of the University community, including but not limited to:

- The severity and impact of the conduct;
- Whether the complainant is a minor under the age of 18;
- Whether prior reports of sex-based harassment have been made against the respondent;
- Whether the respondent threatened further violence or other violence against the complainant or others;
- Whether the University possesses other means to obtain relevant evidence of the alleged sex-based harassment (security cameras, video recordings, photographs or other evidence); and,
- The extent of prior remedial methods taken with the respondent.

After evaluating the appropriate factors, if the complainant's request not to proceed is allowed, the University will take all reasonable steps to respond to the complaint consistent with the request, but its ability to do so may be limited based on the nature of the request by the complainant. Where the University is unable to take action consistent with the request of the complainant, the Title IX Coordinator will notify the complainant of the University's chosen course of action. To the extent possible, the University will avoid taking action that would reveal the identity of the complainant. A complainant who initially requests that the University not proceed with an investigation or disciplinary action may later request that an investigation be conducted. Additionally, the Title IX Coordinator, after granting a request not to proceed, may proceed with an investigation or disciplinary action if any new or additional information becomes available.

### **Multi-Party Complaints**

At the discretion of the Title IX Coordinator, the University may consolidate formal complaints alleging sex-based harassment by more than one respondent, or by more than one complainant against one or more respondents, when the formal complaints alleging sex-based harassment arise from the same set of facts or circumstances.

### **Mandatory Dismissal**

Formal complaints that do not meet the definition of sexual harassment in the Final Rule or which allege sex-based harassment that did not occur in the University's education program or activity against a person in the United States must be dismissed.

## **Discretionary Dismissal**

At the discretion of the Title IX Coordinator, a formal complaint or any specific allegations within a formal complaint may be dismissed during the investigation or hearing if:

- A complainant notifies the Title IX Coordinator in writing that they wish to withdraw the formal complaint or any allegation(s) raised within the formal complaint.
- The respondent is no longer enrolled or employed by the University.
- Specific circumstances prevent the University from collecting sufficient evidence to make a determination regarding the formal complaint or any allegation(s) raised within the complaint.

## **Notice of Dismissal**

If a formal complaint or allegation(s) within a formal complaint are dismissed for reasons stated above, the Title IX Coordinator will send written notice of the dismissal to both the complainant and the respondent. The notice will include the reason for the dismissal.

## **Notice of Removal to Other Campus Policies**

When a formal complaint or allegation(s) within a formal complaint are dismissed for reasons stated above, the University retains discretion to remove the complaint to the jurisdiction of other campus policies (Code of Student Conduct, Employee Handbook, etc.) to determine if a violation of that policy has occurred. If using another campus policy to determine if a policy violation has occurred, written notice will be sent to both the complainant and respondent.

## **Communication**

All communications regarding any aspect of a Title IX report or formal complaint will be sent using the party's campus email address (students and employees) or personal/business email address and/or U.S. Postal Service (third-party). Students and employees are encouraged to check their campus email daily.

## **IX. Resolution Procedures**

### A. Procedural Overview

The procedures below will be used to resolve all formal complaints.

Following the Title IX Assessment (section VIII), the University may seek a remedies-based resolution which does not involve disciplinary action against the respondent or (2) initiate an investigation to determine if a charge should be issued. The intent of the investigation is to gather all evidence and relevant facts to determine if there is sufficient reason to support a charge against the respondent.

## B. Informal Resolution

Informal resolution (remedies-based resolution) is a non-disciplinary approach designed to address the alleged misconduct and eliminate a reported hostile environment without initiating potential disciplinary action against a respondent. Where the Title IX assessment concludes that remedies-based resolution is appropriate, the University will take immediate and corrective action through the imposition of individual and community remedies designed to maintain the complainant's access to the educational, extracurricular, employment or volunteer activities at the University. At no time will the University require, as a condition of continuing enrollment or employment, or any other right, either party to waive the right to an investigation and formal resolution of sexual harassment complaints. Examples of protective, non-disciplinary remedies include mediation, supported direct or indirect communication, targeted or broad-based educational programming or training, or other actions as deemed appropriate by the Title IX Coordinator. Depending on the form of remedies-based resolution used, it may be possible to maintain anonymity. The University will offer mediation for appropriate cases, but it will not compel a complainant to engage in mediation. Mediation, even if voluntary, will not be used in cases involving sexual assault or violence. Participation in remedies-based resolution is voluntary, and either party can request to end remedies-based resolution at any time and proceed with an investigation and potential disciplinary action. Likewise, a complainant may request remedies-based resolution at any time prior to a hearing, provided that the University determines that the complainant's request is consistent with the University's obligations under Title IX to ensure the safety and welfare of the University. In cases where informal resolution is used, both parties must give written consent and may withdraw consent in writing at any time prior to the resolution. The Title IX Coordinator will maintain records of all reports and conduct resolved by remedies-based resolution.

## C. Formal Complaints

### **Investigations:**

The University is obligated to investigate allegations in any formal complaint and send written notice to both complainant and respondent of the allegations upon receipt of a formal complaint.

During an investigation and disciplinary proceeding, both the complainant and the respondent may have an Advisor at his/her expense (see *Advisors* below this section). The Advisor may be present at any meeting or proceeding related to the investigative or disciplinary process in which the individual to whom the Advisor is assigned is present. The Advisor may observe but may not speak on behalf of the individual to whom the Advisor is assigned during any interview or hearing. The investigator will conduct the investigation in a manner appropriate in light of the circumstances of the case. He or she will coordinate the gathering of information from the complainant, the respondent, and any other individuals who may have information relevant to the

determination. The investigator will also gather any available physical evidence, including documents, communications between the parties, and other electronic records as appropriate. The complainant and respondent will have an equal opportunity to be heard, to submit information, and to identify witnesses who may have relevant information. Witnesses must have observed the acts in question or have information relevant to the incident; character witnesses who do not have information relevant to the case will not be considered. The investigation is designed to provide a fair and reliable gathering of the facts. It will be thorough, impartial, and fair, and all individuals will be treated with respect. The investigation is a neutral fact-gathering process. The respondent is presumed to be not responsible; this presumption may be overcome only where the Hearing Officers conclude that there is sufficient evidence, by clear and convincing evidence, to support a finding that the respondent violated the policy. The University will seek to complete the investigation within thirty (30) calendar days from the start of the investigation, but this time frame may be extended depending on the circumstances of the case. At the request of law enforcement, the University may agree to defer its Title IX fact gathering until after the initial stages of a criminal investigation. The University will communicate with the complainant and the respondent regarding Title IX rights, responsibilities, procedural options, and the implementation of necessary interim measures to assure the safety and well-being of all affected individuals. If applicable, the University will promptly resume its Title IX fact gathering as soon as law enforcement permits it to do so. Information the University gathers during the review or investigation will be used to evaluate the responsibility of the respondent, to provide for the safety of the complainant and the University community, and to take appropriate measures to end any misconduct, prevent its recurrence, and address its effects. The Title IX Coordinator will retain copies of all reports generated as a result of investigations. The University will keep these records private to the extent permitted by law. Although all witnesses, the complainant, and the respondent are expected to participate in the investigative process, neither party is required to participate in the investigation under these procedures. If a party chooses not to participate in an investigation, the investigation and potential disciplinary proceedings may still proceed. In order to protect the integrity of the investigation, none of the parties involved in the investigation should discuss with any witness or potential witness what was shared with investigator while proceedings are pending.

#### During the Investigation:

- The burden of gathering evidence and burden of proof must remain on the University, not on the parties.
- The University will provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- The University will not restrict the ability of the parties to discuss the allegations or gather evidence.
- Both parties will have the same opportunity to select an advisor of the party's choice who may be, but need not be, an attorney.
- The University will send written notice of any investigative interviews,

meetings, or hearings.

- The University will send the parties, and their advisors, evidence directly related to the allegations in electronic format or hard copy, with at least 10 days for the parties to respond.
- The University will send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.
- The University will dismiss allegations of conduct that do not meet the definition of sexual harassment or did not occur in one of the University's education programs or activity against a person in the United States. Such dismissal is only for Title IX purposes and does not preclude the University from addressing the conduct in any manner the University deems appropriate.
- The University may, in its discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the University from gathering sufficient evidence to reach a determination.
- The University will send the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.
- The University may, in its discretion, consolidate formal complaints where the allegations arise out of the same facts.
- The medical, psychological, and similar treatment records of either party may not be accessed or used unless the University obtains the party's voluntary, written consent to use such records.

At the conclusion of the investigation, the investigator will prepare a written report that summarizes the information gathered and synthesizes the areas of agreement and disagreement between the parties and any supporting information. Before the investigative report is finalized, the complainant and respondent will have the opportunity to review it. The complainant and respondent may submit any additional comments, request changes, or request further investigation from the investigator. After giving the parties the opportunity to comment on the report orally or in writing, the investigator will make changes to the report based on those comments at his or her discretion. He or she will then submit the report to the designated Title IX coordinator for dissemination to the Hearing Officers. All copies of the investigation report (the original, copies bearing feedback from the parties, and the investigator's final report should be identified and maintained in the case file.

#### Advisors

If an investigation of prohibited conduct is initiated, the complainant and respondent will be invited to bring an advisor to their interview and/or to the hearing as a source of support. Advisors may accompany the complainant and respondent at interviews or hearings. Parties may request a brief recess to consult with their advisors, which will be granted at the discretion of the investigators, Hearing Officers, or Review Board, as

applicable. The Advisor's primary roles at the hearing are to 1) provide support for the complainant or respondent, and 2) provide cross-examination to the other party on behalf of their advisee. Advisors may not directly question the Investigator, Hearing Officers, or Review Board. Any Advisor who does not follow the University's policies, procedures, or practices relating to the advisor's role in the resolution process will receive an initial warning. If the advisor continues to disregard the University's policies, procedures, and/or practices or disrupts or otherwise fails to respect the limits of the role, such advisor will be required to leave the meeting, hearing, or other proceeding at the discretion of the investigator, Hearing Officers, or Review Board, as applicable. When an advisor is removed from a meeting, hearing, or other proceeding, the proceeding will continue without the advisor's presence. Parties may choose to share their copy of the investigation report with their advisor. Neither a party nor an advisor may duplicate the investigation report. All advisors are expected to maintain the privacy of any records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University or by the applicable law. The University may restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations. The University expects all advisors to adjust their schedules to allow them to attend University meetings when scheduled. The University does not typically change scheduled meetings to accommodate an advisor's inability to attend. The University will, however, make provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available. The University will not recognize or enforce agreements between an advisor and the complainant/respondent that are reached outside of these procedures.

## D. Hearings

### 1. Hearing Officers

North Carolina Wesleyan University uses two Hearing Officers who together determine responsibility and, if warranted, administer sanctions and/or discipline against a respondent. Each hearing officer is appointed by the Title IX Coordinator and is specially trained to adjudicate cases of sex-based harassment. The Hearing Officers are selected from a pool of individuals trained to serve. Hearing Officers must be impartial and free of any conflict of interest. A pre-hearing conference is held prior to formally beginning. The Hearing Officers shall determine the order of the proceedings, the relevancy of witnesses and evidence, and the nature of questioning. The Hearing Officers shall exercise reasonable discretion in adjudicating all matters not expressly covered under this Policy and shall have the authority to make the final determination as to all procedural questions or issues that may arise. The Hearing Officers will determine whether to formally charge the respondent and will notify the parties. A charge will be issued if the complainant's factual allegations are plausible and could constitute a violation of this policy. Absent extenuating circumstances, the decision whether to formally charge the respondent will be made within two (2) calendar days after the Hearing Officers receive the investigation report. The Title IX

Coordinator reserves the right to overturn the Hearing Officers' decision with respect to whether to issue a charge. The formal charge(s) will state the subject matter of the complaint, the name of the complainant, and the approximate date and/or timeframe for the alleged conduct. The Hearing Officers may deliver notice of the charge by one or more of the following methods:

- In-person or via a designated University administrator;
- Mailed to the local or permanent address of the individual as indicated in official University records; or
- Emailed to the individual's University-issued email account.

## 2. Pre-hearing Conference

Once a formal charge has been issued, the respondent will answer the charge as "Responsible", "No Contest", or "Not Responsible". If the respondent answers "Responsible" or "No Contest", the Hearing Officers will review the charge to determine an appropriate sanction. The respondent must answer the charge before or during the Pre-Hearing Conference with the Hearing Officers, which is held, absent extraordinary circumstances, within seven (7) calendar days after the issuance of the formal charge document. Upon the issuance of a formal charge, the investigation report and related appendices will be made available to the parties for their review. The Hearing Officers will determine whether there is sufficient justification for asking a witness to attend in person or whether the witness statement adequately summarizes the information. Absent extenuating circumstances, the Pre-Hearing Conferences will be held within seven (7) calendar days of issuance of the charge document. If additional investigation is required, the Hearing Officers will set a timeframe in which it is to be completed and reviewed by both parties prior to the hearing.

## 3. Hearing Procedures

A hearing will be held in a timely manner; assuming no extraordinary circumstances, within fourteen (14) calendar days of issuance of the formal charge. The Hearing Officers will review the investigation report prior to the hearing. All hearings will be live. Each party's advisor will be allowed to ask the other party and any witnesses all relevant questions and follow-up questions, including questions challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. Live hearings may be conducted with all parties physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. At the request of either party, the University must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not

relevant. If a party does not have an advisor present at the live hearing, the school must provide, without fee or charge to that party, an advisor of the school's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. With or without a hearing, after the school has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. All hearings are closed to the public. Although both the complainant and respondent may be asked to be present at various times during the hearing, if either party would prefer not to be physically present during the hearing, the party can participate through electronic means or a privacy screen may be erected. Neither party is required to participate in the hearing in order for the hearing to proceed. If either party is not in attendance, the hearing may still proceed, findings may still be made, and sanctions may still be imposed. During the hearing, the Hearing Officers may question the complainant, the respondent, any witnesses called, and/or the investigator, and examine related information and evidence. The hearing officers shall restrict their questions to matters relevant to the specific case. The parties cannot verbally pose questions to each other or to witnesses. However, in advance of the hearing, the parties may submit written questions to the hearing officers to ask on their behalf. The hearing officers will screen the questions and have discretion to determine whether to ask them. The Hearing Officers will not ask questions in violation of University policy and prior evidentiary decisions, or questions that are irrelevant or repetitive. Additionally, the adjudicators have discretion to change the wording of the question. The parties cannot call witnesses or present information at the hearing that could reasonably have been provided during the investigation. If information produced during the hearing discloses additional tangible evidence or witnesses with relevant information that could not have reasonably been provided during the investigation, the Hearing Officers, in their sole discretion, may obtain that evidence or call those witnesses to testify. Hearing officers, investigators, and advisors are expected to maintain the privacy of the participants in these proceedings except where disclosure may be authorized or mandated by law or University policy. After considering all of the relevant information, the hearing officers will deliberate and make findings of fact supported by clear and convincing evidence. From those facts, the Hearing Officers will reach conclusions as to whether the respondent is responsible for conduct in violation of this policy. The two (2) officers must agree "responsible" for a finding of responsibility. A deadlock will result in a finding of "not responsible". At any time during the hearing process, the respondent may choose voluntarily to agree to a finding of responsibility relating to some or all of the charged conduct and proceed to the disciplinary stage of the process. The hearing officers must issue a written

determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant. The written determination must be sent simultaneously to the parties along with information about how to file an appeal.

#### 4. Evidentiary Standard

The Hearing Officers will use the evidentiary standard of clear and convincing evidence in making determinations of responsibility for charges. 'Clear and convincing' means that the evidence presented is substantially more probable to be true than not true. In other words, the Hearing Officers must have a firm belief that the evidence presented is factual and supports a finding of responsibility.

#### 5. Imposition of Sanction

If the respondent is found "Responsible" or agrees to a finding of responsibility, the hearing officers, following consultation with the Title IX Coordinator, will impose a sanction designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and complying with the University's Title IX obligations. The complainant and respondent will each have the opportunity to present a statement about the impact of the violation and/or requested sanctions. The hearing officers will review these statements only if they find, or the respondent accepts, that the respondent is responsible for one or more violations. The hearing officers shall determine the appropriate sanction (or combination of sanctions) in accordance with the Code of Student Conduct. Both hearing officers must be in favor of the imposition of each sanction or combination of sanctions. If they fail to agree, the Title IX Coordinator will make the final determination. If the respondent is no longer a student at the time of sanctioning, the hearing officers may impose any sanction as outline in the Code of Student Conduct and/or may consider the respondent persona non grata on campus property, any property under the control of the University, and/or any event under the control of the University. In considering the appropriate sanction, the hearing officers may consider the circumstances, including but not limited to the following factors:

- The respondent's prior discipline history;
- Sanctions previously issued for similar incidents;
- The nature and violence of the conduct at issue;
- The impact of the conduct on the complainant;
- The impact of the conduct on the community, its members, or its property;
- Whether the respondent has accepted responsibility;
- Whether the respondent is reasonably likely to engage in the conduct in the future;
- The severity of the sanction necessary to ensure that the conduct does not recur;
- Any other mitigating or aggravating circumstances, including the University's

values.

## 6. Notice of Outcome

Within two (2) calendar days of the decision, the Hearing Officers shall provide to the parties a copy of the written report of the Hearing Officers' decision. If applicable, the hearing officers will inform the respondent of any sanctions, the date by which the requirements must be satisfied, and the consequences of failure to satisfy the requirements. The hearing officers also will inform the complainant of any sanctions that directly relate to the complainant or are required by federal law to be disclosed to the complainant in the case of certain sexual offenses, including sexual assault, domestic/dating violence, and stalking. The hearing officers will also provide each party with an outcome letter containing their appeal options. The University will also notify those University employees necessary to implement the outcome and/or sanctions.

Upon a finding of responsibility, additional remedies, in addition to the issued sanction, may be available to a complainant. Examples of potential remedies are provided in Section 8-Interim Measures. The Title IX Coordinator, in consultation with others as necessary, will determine any appropriate additional remedies.

## E. Appeal Process

Either party may appeal the finding of a policy violation/non-violation and/or a sanction within seventy-two (72) hours of receipt of the written hearing report. Appeals must be in writing, specifying in detail the basis for the appeal. The Provost will appoint a Review Board of Title IX-trained staff and faculty to review these matters. The Chair of the Review Board will be someone who was not involved in the original hearing. The Review Board will be comprised of three (3) members of the North Carolina Wesleyan University community who do not have a conflict of interest in the case and who have received training on Title IX, the University's policy and the Appeal process. For an appeal to be granted, at least two (2) members of the Review Board must vote to grant appeal. Appeals, if granted, do not constitute a re-hearing of the case and the Review Board will defer to decisions of the hearing officers unless one or more of the reasons for granting the appeal are satisfied. The Review Board will review the entire written hearing record, the written appeal and other documents it deems relevant. Upon completion of this review, the Review Board may grant or reject a request for appeal based on one or more of the following grounds if it reasonably determines the ground(s) could more likely than not impact the underlying decision:

- Newly discovered evidence/information that could affect the outcome of the matter (this does not apply in cases of deliberate omission of information by the appellant or in cases where the information was known but not shared);
  - Procedural irregularity significant enough to affect the outcome of the matter;
- or

- Title IX personnel had a conflict of interest or bias significant enough to affect the outcome of the matter.

If the Review Board decides to grant an appeal, it may decide the case based solely upon the hearing record, the written appeal, and other documents it deems relevant, or it may remand the case to the original hearing officers in cases in which there is new information presented. The Chair of the Review Board will determine the proper composition of the panel for any appeal and oversee the process. The President will accommodate any conflicts that may arise with members constituting the panel. The Appeals Panel will confer with the Title IX coordinator on matters relating to consistency of sanctions and adherence to the University's policy.