



**STANDARD OPERATING PROCEDURE**

<b>SOP TITLE:</b>	Title IX Grievance Procedure		
<b>SOP NUMBER:</b>	SOP613		
<b>DIVISION / DEPARTMENT:</b>	Compliance & Communications – Civil Rights & Title IX		
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## 1.0 Grievance Overview

The University will act on any formal or informal notice/complaint of violation of this policy.

The University's formal complaint grievance process shall:

- A. Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, in accordance with a grievance procedure compliant with this Policy before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in this Policy, against a respondent. Remedies must be designed to restore or preserve equal access to the University's education program or activity. Such remedies may include the same individualized services defined in this Policy as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;
- B. Require an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence, and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;
- C. Require that any individual designated by the University as a Title IX Coordinator, investigator, decision-maker, or any person designated by a University to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- D. Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;
- E. Include reasonably prompt time frames for conclusion of the grievance process;
- F. Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the University may implement following any determination of responsibility;
- G. State that the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard and that the University will apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;
- H. Include the procedures and permissible basis for the complainant and respondent to appeal;
- I. Describe the range of supportive measures available to complainants and respondents; and
- J. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

## 2.0 Prohibited Behavior

The types of sexual harassment covered by this Policy includes conduct on the basis of sex that satisfies one or more of the definitions below.

*Note that sexual misconduct or other discrimination on the basis of sex that does not fall within these specific definitions may still violate University policy and should be reported to the Office of Civil Rights & Title IX.*

## **2.1 Sexual Harassment**

Conduct on the basis of sex or that is sexual in nature, that satisfies one or more of the following:

### **A. Quid Pro Quo Harassment**

- a. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

### **B. Title IX Sexual Harassment**

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

## **2.2 Sexual Assault**

Any sexual act directed against another person, without the consent of the complainant, including instances where the complainant is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes and/or genders.

### **A. Rape**

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

### **B. Sodomy**

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

### **C. Sexual Assault with an Object**

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

### **D. Criminal Sexual Contact**

The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

### **E. Incest**

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

### **F. Statutory Rape**

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

New Mexico the age of consent is 17.

### **2.3 Dating Violence**

Violence committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

- A. The existence of such a relationship shall be determined based on a consideration of the following factors:
  - 1. The length of the relationship;
  - 2. The type of relationship;
  - 3. The frequency of interactions between the persons involved in the relationship.

For the purposes of this definition, Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.

### **2.4 Domestic Violence**

A felony or misdemeanor crime of violence committed:

- A. By a current or former spouse or intimate partner of the Complainant;
- B. By a person with whom the Complainant shares a child in common;
- C. By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
- D. By a person similarly situated to a spouse of the complainant under the domestic or family violence laws of New Mexico;
- E. By any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of New Mexico.

### **2.5 Stalking**

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

For the purposes of this definition:

- A. Course of conduct means two (2) or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- B. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

### **2.6 Related Terms and Definitions**

[Appendix B](#) contains a list of related terms and definitions

## **2.7 Retaliation**

Neither the University nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

Complaints alleging retaliation may be filed according to the grievance procedures within the Discrimination and Harassment - Title IX policy.

The following are not deemed to be acts of retaliation:

- A. The exercise of rights protected under the First Amendment does not constitute retaliation.
- B. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute retaliation provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

## **3.0 Grievance Process**

### **3.1 Notice/Complaint**

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, Title IX Coordinator initiates a prompt initial assessment to determine the next steps the University needs to take.

### **3.2 Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator or designee begins an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment include:

- A. Reaches out to the Complainant and Respondent to offer supportive measures.
- B. Appendix A has a list of possible Supportive Measures.
- C. Determine if the person impacted wishes to make a formal complaint, and assist them in doing so, if desired.
  - 1. If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- D. If a formal complaint is received, assess its sufficiency and works with the Complainant to make sure it is correctly completed.

- E. Ensure the Complainant is aware of the right to have an Advisor.
- F. Determine whether the Complainant prefers:
  - 1. a supportive and remedial response,
  - 2. The Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - 3. an informal resolution option, or
  - 4. The Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in informal resolution.
  - 5. a formal investigation and grievance process.
  - 6. The Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
    - 7. If it does, the formal investigation and grievance process will be initiated.
    - 8. If it does not, the Title IX Coordinator will dismiss and assess which policy may apply and will refer the Complainant to the appropriate University official.

G. Violence Risk Assessment

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Threat Assessment Team as part of the initial assessment. A VRA can aid in critical and/or required determinations, including:

- 1. Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- 2. Whether the Title IX Coordinator should sign a formal complaint absent a willing/able Complainant;
- 3. To help identify potential predatory conduct;
- 4. To help identify assess/identify grooming behaviors;
- 5. Whether it is reasonable to try to resolve a complaint through informal resolution and what modality may be most successful.
- 6. Whether a Clery Act Timely Warning/Trespass order is needed.

H. Dismissal (Mandatory and Discretionary)

The University must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1. The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy, even if proved; and/or
- 2. The conduct did not occur in an educational program or activity controlled by the University by the University and/or the University does not have control of the Respondent; and/or
- 3. The conduct did not occur against a person in the United States; and/or
- 4. At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the recipient.

The University may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1. A complainant notifies the Title IX Coordinator in writing that the Complainant

- would like to withdraw the formal complaint or any allegations therein; or
- 2. The Respondent is no longer enrolled in or employed by the University; or
- 3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.

Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below.

### **3.3 Request to Temporarily Delay the Grievance Process**

A party may submit a written request to the Title IX Coordinator to temporarily delay the grievance process or provide a limited extension of time for good cause. Good cause may include, but is not limited to:

- A. The absence of a Party, the Party's Advisor, or a Witness;
- B. Concurrent law enforcement activity;
- C. The need for language assistance or disability accommodation. If the request is granted, the Title IX Coordinator will notify the parties in writing of the delay or extension and the reasons for it. The University may also elect to delay the grievance process for good cause.

### **3.4 Privacy**

The University shall keep private the identity of any individual who has made a report or complaint of sex discrimination and/or sexual harassment, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the Respondent of sex discrimination and/or sexual harassment, any respondent, and any witness, except as may be permitted by FERPA, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

## **4.0 Resolution Process**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with University policy. While there is an expectation of privacy around what investigators share with parties during interviews the parties have discretion to share their own knowledge and evidence with others if they so choose. The University encourages parties to discuss this with their Advisors before doing so.

### **4.1 Informal Resolution**

- A. When the parties agree to resolve the matter through an informal manner.
- B. When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or
- C. When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.
- D. To initiate an Informal Resolution, a Complainant needs to submit a formal complaint. If a Respondent wishes to initiate Informal Resolution, they should contact the Title IX

Coordinator to so indicate. Any party participating in the process can stop the process at any time and begin or resume the Formal Grievance Process.

- E. Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University.
- F. Both parties must give voluntary, written confirmation that they wish to resolve the matter through Informal Resolution before proceeding and neither party will be pressured to participate in Informal Resolution.

## **4.2 Formal Grievance Process**

### **A. Notice of Investigation (NOI)**

Following the receipt and review of the formal complaint and it being determined that the matter properly falls under this Title IX Sexual Harassment policy, the parties will be notified in writing of the allegations and that the University will conduct an investigation. The notice will include sufficient details known at the time and allow the Respondent sufficient time to prepare for the interview and to identify and choose an Advisor to accompany them.

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

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official University records, or emailed to the parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in- person, notice will be presumptively delivered.

### **B. Investigation**

All investigations are thorough, reliable, impartial, prompt, and fair. The investigation will involve the following:

1. Gather relevant evidence
2. If a party wishes for their medical records, prior educational records, or other records that are external to the University to be considered in the grievance process they must provide written consent for those records to be released to the University and make arrangements for the records to be sent to the University.
3. Interviewing the Complainant, Respondent, and any Witnesses;
4. Investigator will audio and/or video record interviews.
5. Review and assessment of all related written statements, reports, and other relevant material.
6. Preparation of an Investigative Report that organizes, assesses, and fairly summarizes the relevant evidence.

### **C. Inspection and Review of Evidence and Parties' Response**

Prior to the completion of the Investigative Report, the parties and their Advisors, will receive an electronic copy of all the evidence obtained from the investigation that is directly related to the allegations.

1. Parties will have ten (10) calendar days to submit a written response, which will be considered prior to the completion of the Investigative Report. This is an opportunity for each party to correct or clarify the evidence or provide additional information before the Investigative Report is completed.
2. Any written response from the parties will be included in the Investigative Report.
3. A party's failure to respond will be taken as their confirmation that the evidence they received is accurate for the purposes of the following procedural steps.

### **D. Investigative Report Prepared and Provided to the Parties**

1. Following the review of the parties' responses (if any) to the evidence, the Title IX Coordinator/Investigator will prepare an Investigative Report that summarizes all relevant evidence; the report will not contain irrelevant information.
2. At least ten (10) business days prior to the hearing, the investigative report will be provided to the parties and their advisors via electronic format.
3. The parties may choose to provide a written response to the investigative report, which must be submitted at least five (5) business days prior to the start of the hearing. The response may consist of a concise written statement. At least 48 hours prior to the hearing, the parties and their advisors will be provided with the other party's written response to the investigative report, if any, in electronic format.

### **E. Pre-Hearing Conference**

Each party and their Advisor will attend a Pre-Hearing Conference with the Hearing Chairperson. The purpose of this Pre-Hearing Conference is to prepare the parties for the Hearing and ensure that they understand the procedures.

1. The Pre-Hearing Conference must occur after the parties have had ten (10) calendar days to review the Investigative Report and any additional evidence and respond. The Title IX Coordinator/Investigator will be present, but the Decision-Maker will direct the conference.
2. At the Pre-Hearing Conference, the parties and their Advisors:
  - a. Will be notified of the Hearing date, time, and location.
  - b. Will have the opportunity to inspect and review the Investigative Report and all the evidence directly related to the allegation, including evidence upon which the University does not intend to rely on in making a determination of responsibility and exculpatory and inculpatory evidence.
  - c. Will confirm the list of Witnesses that will be called at the Hearing.
  - d. Will submit in writing any evidence they intend to use or questions they intend to ask (through their Advisor) of the other party and any Witnesses at the Hearing.
3. During the Pre-Hearing Conference, the Decision-Maker will review the submitted

- questions and evidence and make a determination regarding their relevancy.
4. If a question or evidence is not relevant, the Decision-Maker will explain and document their decision to exclude it from the Hearing in the Pre-Hearing
  5. Conference Summary. The parties may provide reasons why they believe the question or evidence is relevant or not relevant and their rationale will be taken into consideration by the Decision-Maker.
  6. Questions and evidence about the Complainant's or Respondent's sexual predisposition or prior sexual behavior are not relevant. There are three (3) exceptions:
    - a. Such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant;
    - b. If the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent;
    - c. If the questions and evidence concern specific incidents of the Respondent's prior sexual behavior with respect to the Complainant and are offered to prove consent.
  7. Exclusion of such questions or evidence will be explained and documented in the Pre-Hearing Conference Summary.
  8. Questions or evidence that constitute or seek disclosure of information protected by a legally recognized privilege are not permitted at the Hearing, unless the person holding the privilege waives it. This may include information protected by doctor-patient or attorney-client privilege. The exclusion of such questions or evidence will be explained and documented in the Pre-Hearing Conference Summary.
  9. The parties and their Advisors will be informed that they may still resolve the matter informally at this point in the grievance process. See Section V.A for information about Informal Resolutions. If the parties wish to continue to a Hearing, the Hearing Chairperson will review Hearing procedures with each party.
  10. The Decision-Maker will write a Pre-Hearing Conference Summary that includes documentation of relevancy-based exclusions of questions or evidence and the list of approved questions or evidence. The Decision-Maker will provide it to the parties in writing before the Hearing and it will become part of the record.

## **F. Hearing**

The University Procedures shall provide for an equitable process for making a determination.

1. The Decision-Maker will conduct a live Hearing to determine whether the Respondent is responsible for the alleged conduct using the preponderance of the evidence standard (which means more likely than not). If the Decision-Maker finds the Respondent violated this policy, they will determine what disciplinary measures or sanctions will be imposed.
2. The Decision-Maker will direct the hearing and the determination. The University, at its discretion, may employ a third party to conduct the hearing.

3. The Title IX Coordinator/Investigator will be present at the Hearing to answer questions or clarify information, but will have no other role in the grievance process.
4. The Decision-Maker will be permitted to call witnesses. Each party's Advisor will be permitted to present evidence and ask the other party and any witnesses all relevant questions and follow-up questions, including those that challenge credibility.
5. Before a party or Witness responds to a question or evidence presented, the Decision-Maker must first determine whether it is relevant and explain any decision to exclude a question or evidence presented as not relevant, unless the question or evidence presented was approved as relevant during the Pre-Hearing Conference.
6. Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.
7. Either party may request to be located in separate rooms during the Hearing, with technology enabling the Decision-Maker and parties to simultaneously see and hear the party or Witness answering questions.
8. The University shall create an audio or audio-visual recording of any Hearing and make it available to the parties for inspection and review.

#### **G. Standard of Review**

The Decision-Maker will review the Investigative Report and Hearing under the "preponderance of the evidence" standard which means "it is more likely than not" that a violation occurred based on the information available.

#### **H. Parties Receive Written Determination Regarding Responsibility**

1. The Decision-Maker will simultaneously provide the parties a written determination regarding responsibility and any applicable disciplinary action within ten (10) calendar days of the Hearing's conclusion.
2. If an appeal is filed, the determination will become final on the date that the University provides the parties with the written determination of the result of the appeal.
3. If no appeal is filed, the determination will become final on the date that an appeal would no longer be timely.

#### **I. Appeal**

1. The Complainant and/or the Respondent may appeal to the appropriate Vice President a determination regarding responsibility or the University's dismissal of a Formal Complaint.

2. Appeals must be submitted to the appropriate Vice President in writing within five (5) calendar days of the determination regarding responsibility or within five (5) calendar days of the dismissal of the Formal Complaint.
3. The Title IX Coordinator/Investigator will provide the appropriate Vice President the record of the investigation and Hearing.
4. When an appeal is filed the Title IX Coordinator will notify the other party in writing. Both parties will have five (5) calendar days to submit to the appropriate Vice President a written statement in support of, or challenging, the outcome.
5. The permissible basis's for appeal are:
  - a. Procedural irregularity that affected the outcome of the matter;
  - b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
  - c. The Title IX Coordinator, Investigator, or Decision- Maker had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, that affected the outcome of the matter.
6. The parties will simultaneously receive a written decision describing the result of the appeal and the rationale for the result.
7. If an appeal is filed, the determination will become final on the date that the University provides the parties with the written determination of the result of the appeal. Any sanctions imposed by the initial determination of responsibility will go into effect after the five (5) day window for appeals closes, and if an appeal occurs, after it is complete. However, existing Supportive Measures may remain in place.

## Appendix A: Supportive Measures

WNMU will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged discrimination, harassment, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available, and without fee or charge to the Parties upon receiving Notice/Knowledge or a Complaint. Such measures are designed to restore or preserve equal access to WNMU's education program or activity (including employment and education) without unreasonably burdening the other party, including measures designed to protect the safety of all parties or WNMU's educational environment, or deter discrimination, harassment, or retaliation.

WNMU will maintain the privacy with any supportive measures, provided to the Parties to the extent that maintaining such privacy does not impair the ability of WNMU's to provide those supportive measures. WNMU will act to ensure as minimal an academic/occupational impact on the Parties as possible. The Director of CRTIX or designee is responsible for coordinating the effective implementation of supportive measures and will implement these measures in a way that does not unreasonably burden any party.

Supportive measures may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Student financial aid counseling
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Implementing contact restrictions (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass Orders
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Administrator

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

The Parties are provided with a timely opportunity to seek modification or reversal of WNMU's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Director of CRTIX or designee. An impartial employee other than the employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the Title IX regulatory definition

of supportive measures. WNMU will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances materially change. WNMU typically renders decisions on supportive measures within seven (7) business days of receiving a request and provides a written determination to the impacted party(ies) and the Director of CRTIX or designee.

**RESOURCES FOR ONLINE STUDENTS**

The Director of CRTIX or designee will work with the online student to identify available resources within their local area.

## Appendix B: Related Terms and Definitions

### 1. Consent

Consent is an affirmative, informed, and conscious decision to willingly engage in mutually acceptable sexual activity. Consent requires a clear and affirmative act or statement by each participant to each sexual act in a sexual interaction and can be revoked at any time. Consent demonstrates that the conduct in question is welcome and wanted. Relying solely on non-verbal communication can lead to miscommunication about one's intent. Confusion or ambiguity may arise at any time during a sexual interaction therefore, it is essential that each participant makes clear their willingness to continue at each progression of the sexual interaction. Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on WNMU to determine if its policy has been violated.

Sexual activity will be considered to have occurred "without consent" if no clear act or statement is given. Consent may not be inferred from silence, passivity, or lack of active response alone. A person who is asleep, unconscious, or otherwise unaware of what is happening is unable to give consent. Furthermore, a current or past dating or sexual relationship is not sufficient to constitute consent in every instance, and consent to one form of sexual activity does not imply consent to other forms of sexual activity. It is the responsibility of the person initiating the sexual activity to obtain consent from their partner. Being intoxicated or under the influence of other drugs does not diminish one's responsibility to obtain consent.

### 2. Incapacitation or Incapacitated

Incapacitation is a mental or physical state in which a person lacks the ability to understand the consequences of their actions and, therefore, cannot make a rational, reasonable decision. An individual who is incapacitated is unable to give Consent to sexual contact. States of incapacitation includes sleep, unconsciousness, intermittent consciousness, or any other state where the individual is unaware that sexual contact is occurring. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to Consent to sexual contact.

Alcohol or drug use is one of the prime causes of incapacitation. Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is incapacitated, and therefore unable to give Consent, requires an assessment of whether the consumption of alcohol or other drugs has rendered the individual physically helpless or substantially incapable of:

- a. Making decisions about the potential consequences of sexual contact;
- b. Apprising the nature of one's own conduct;
- c. Communicating consent to sexual contact; or
- d. Communicating unwillingness to engage in sexual contact.

An individual's intoxication is never an excuse for or a defense to committing sexual harassment, sexual assault, or sexual violence.

### 3. Complainant

A party or entity who makes a complaint against another person or entity.

**4. Respondent**

A party or entity who has been accused of committing an act.

**5. Student**

Any person who has been accepted for admission at the University as an undergraduate, graduate or student of professional studies, whether fulltime, part- time or distance education.

**6. Employee**

An individual who is paid by the University to perform specific job duties, including faculty and staff, whether they are employed part-time or fulltime.

**7. Mandated Reporter**

All employees of the University are required to promptly report to the Title IX Coordinator any report of sex discrimination or sexual harassment made to the employee and report any conduct observed which appears to be sex discrimination or sexual harassment in a University education program or activity.

**8. Reasonable Person**

A reasonable person under similar circumstances and with similar identities to the Complainant.

**9. Confidential Resources**

A person who does not have a duty to report incidents of sex discrimination or sexual harassment to the Title IX Coordinator. The University Mental Health Therapist and Ombudspersons are confidential resources and respect and protect confidential communications from students, faculty, and staff to the extent they are legally able to do so. Employees may have to breach a confidence, however, when they perceive an immediate and serious threat to any person or property.

## **Appendix C: Bill of Rights**

1. Be treated with respect, dignity, and sensitivity throughout the process.
2. Information on obtaining orders of protection and no contact orders.
3. Information on how the University will protect the privacy of the complainant and respondent.
4. Notification of how to access all available campus and local resources (i.e., counseling services, advocacy/support).
5. Receive a copy of the University's Discrimination and Harassment – Title IX policy and standard operating procedures.
6. Written notification of supportive measures.
7. The opportunity to choose an Advisor to guide them throughout the process.
8. A timely and thorough investigation of the allegations.
9. The opportunity to present and have others present evidence about alleged violation in the investigatory and hearing process.
10. Be notified, in writing of the outcome of any investigative, disciplinary, or appeals proceeding.
11. Appeal the decision and sanctions determined by the investigation and hearing process.
12. Be protected against retaliation for their involvement in university investigatory proceedings.

## Appendix D: Possible Sanctions

Factors the Decision-maker may consider when determining sanctions and responsive actions include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the Parties
- The Respondent's acceptance of responsibility
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as it 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 this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

### STUDENT SANCTIONS

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

- **REPRIMAND:** A formal statement that the conduct was unacceptable and a warning that further violation of any WNMU policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **REQUIRED COUNSELING:** A mandate to meet with and engage in either WNMU sponsored or external counseling to better comprehend the misconduct and its effects.
- **RESTRICTIONS:** A student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, study abroad, or holding leadership roles in student organizations.
- **PROBATION:** An official sanction for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from extra-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- **SUSPENSION:** Separation from the institution, or one or more of its facilities, for a defined period of time, typically not to exceed two (2) years, after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension, on successfully applying for readmission, or upon a general condition that the student is eligible to return if the institution determines it is appropriate to re-enroll/readmit the student. The student is typically required to vacate institutional property within 24 hours of notification of the action, though this deadline may be extended at the discretion of the Director of CRTIX or designee or other appropriate official. During an institution-wide suspension, the student is banned from institutional property, functions, events, and activities unless they receive prior written approval

from an appropriate institutional official. This sanction may be enforced with a trespass action, as necessary.

- **EXPULSION:** Permanent separation from the institution. The student is banned from institutional property, and the student's presence at any institution-sponsored activity or event is prohibited. This action may be enforced with a trespass action, as necessary.
- **WITHHOLDING DIPLOMA:** WNMU may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for violating Policy.
- **REVOCAION OF DEGREE:** While very rarely exercised, WNMU reserves the right to revoke a degree previously awarded from WNMU for fraud, misrepresentation, and/or other violation of WNMU policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **OTHER ACTIONS:** In addition to, or in place of, the above sanctions, WNMU may assign any other sanctions as deemed appropriate.

### **STUDENT GROUP AND ORGANIZATION SANCTIONS**

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

- **WARNING:** A formal statement that the conduct was unacceptable and a warning that further violation of any WNMU policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **PROBATION:** An official sanction for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the group or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of WNMU funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- **SUSPENSION:** Termination of student group or organization recognition and/or institutional support for a defined period of time not to exceed two (2) years and/or until specific criteria are met. During the suspension period, a student group or organization may not conduct any formal or informal business or participate in WNMU-related activities, whether they occur on- or off-campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from WNMU.
- **EXPULSION:** Permanent termination of student group organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- **LOSS OF PRIVILEGES:** Restricted from accessing specific WNMU privileges for a specified period of time.
- **OTHER ACTIONS:** In addition to or in place of the above sanctions, WNMU may assign any other sanctions as deemed appropriate.

### **EMPLOYEE SANCTIONS/RESPONSIVE/CORRECTIVE ACTIONS**

Responsive actions for an employee who has engaged in discrimination, harassment, and/or retaliation include:

- Verbal or Written Warning
- Performance Improvement Plan/Management Process
- Enhanced Supervision, Observation, or Review
- Required Training or Education

- Probation
- 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
- Suspension/ without Pay
- Termination
- Other Actions: In addition to or in place of the above sanctions/responsive actions, WNMU may assign any other responsive actions as deemed appropriate

## Appendix E: Additional Reporting Options

Concerns about WNMU's application of this Policy, procedure, or compliance with certain federal civil rights laws may be addressed to:

### **Office for Civil Rights (OCR)**

Denver Office  
Cesar E. Chavez Memorial Building, 1244  
Speer Boulevard, Suite 310  
Denver, CO, 80204-3582  
Telephone: (303) 844-5695  
Facsimile: (303) 844-4303 Email:  
[OCR.Denver@ed.gov](mailto:OCR.Denver@ed.gov)

### **Assistant Secretary for Civil Rights**

#### **Office for Civil Rights, National Headquarters**

U.S. Department of Education  
Lyndon Baines Johnson Dept. of Education Building 400  
Maryland Avenue, SW  
Washington, DC 20202-1100  
Telephone: 800-421-3481  
Fax: 202-453-6012; TDD: 800-877-8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

## Appendix F: Training

1. All Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment as set forth in this Policy, the scope of the University's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
2. All decision-makers shall receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
3. All investigators shall receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
4. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, shall not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment; and shall include
  - a. a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;
  - b. reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the University offers informal resolution processes, and
  - c. a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. "Good cause" may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.