



**WINSTON-SALEM**  
STATE UNIVERSITY

# **Complaints Involving Students Procedures**

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## Prohibited Conduct

In determining whether alleged conduct constitutes Prohibited Conduct under this policy, the University will look at the entire record as a whole and consider the totality of the circumstances. This inquiry will examine information such as the nature of the conduct and the context in which the alleged incidents occurred. All determinations regarding whether a Respondent has engaged in Prohibited Conduct will be based upon a thorough and comprehensive review of the facts, and made on a case-by-case basis utilizing the preponderance of the evidence standard.

The following forms of conduct, including attempting to engage in such conduct, are expressly prohibited by this policy (“Prohibited Conduct”):

- A. Sexual Assault** – Any act of vaginal or anal intercourse or penetration, however slight, by a person’s penis, finger, other body part or object; oral-genital contact; or intentional touching of a person’s breasts, buttocks, groin, genitals, or other intimate parts without Consent. Touching may be over or under clothing and may include the Respondent touching the Complainant, the Respondent making the Complainant touch the Respondent or another person, or the Respondent making the Complainant touch the Complainant’s own body.
- B. Sexual Harassment** - Unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature when:
  - 1) submission to such conduct is made an explicit or implicit a term or condition of a person’s instruction, academic standing, employment or participation in any University program, act;
  - 2) submission to, or rejection of, such conduct is used as a basis for evaluation in making academic or personnel decisions; or
  - 3) such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive, both subjectively and objectively, that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University’s educational, employment, residential, and/or campus experience.

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of sexual assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

**Examples of Sexual Harassment** - The following examples are illustrative of conduct that, if proven, may be considered by the University to establish sexual harassment:

- 1) unsolicited, unwelcomed flirtations, advances, and/or propositions of a sexual nature;
- 2) insults, jokes, or anecdotes that belittle or demean an individual or a group's sexuality, gender, gender identity, gender expression, non-conformance with gender stereotypes, or sexual orientation;
- 3) unwelcomed sexually-oriented gestures, verbal expressions, or comments of a sexual nature about an individual's body, clothing, or sexual experience;
- 4) inappropriate displays of sexually suggestive objects or pictures;
- 5) unnecessary and inappropriate touching, such as hugging, or brushing against an individual's body, patting, pinching

- 6) suggestions that submission to or rejection of sexual advances will affect decisions regarding such matters as an individual's employment, work assignments, status, salary, academic standing, grades, receipt of financial aid, or letters of recommendation.

**C. Gender-Based Discrimination or Harassment** - Any intentional or unintentional act that results in an individual being excluded from participation in, denied the benefits of, or subjected to discrimination or harassment under any academic, extracurricular, research, occupational training, or other education program or activity, based upon the individual's gender, gender identity, gender expression, non-conformance with gender stereotypes, or sexual orientation. Gender-Based Discrimination or Harassment may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do

Gender-Based Harassment also includes harassment based upon the individual's gender, gender identity, gender expression, non-conformance with gender stereotypes, or sexual orientation when:

- 1) submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of a person's instruction, academic standing, employment or participation in any University program, activity or benefit; or
- 2) submission to, or rejection of, such conduct is used as a basis for evaluation in making academic or personnel decisions; or
- 3) such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive, both subjectively and objectively, that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's educational, employment, residential and/or campus experience.

As used in this policy, gender, gender expression, gender identity, and sexual orientation are defined as follows:

- Gender - The sex of an individual, male or female, based on reproductive anatomy.
- Gender Identity - A person's self-conception of being a man or woman, boy or girl, transgender, or gender fluid.
- Gender Expression - The physical manifestation of one's gender identity, usually expressed through clothing, grooming, mannerisms, chosen names, and social interactions that associate with the social definitions of masculinity and femininity, rather than birth sex.
- Sexual Orientation - An individual's natural preference when developing emotional and/or sexual relationships with people of the same sex (homosexual relationships), opposite sex (heterosexual relationships), or either sex (bisexual relationships).

**Examples of Gender-Based Discrimination or Harassment** - Specifically, under this policy, in providing any aid, benefit, or service to a student, no person shall, on the basis of gender, gender identity, gender expression, non-conformance with gender stereotypes, or sexual orientation:

- 1) treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
- 2) provide different aid, benefits, or services, or provide aid, benefits, or services in a different manner
- 3) deny any person any aid, benefit, or service;
- 4) subject any person to separate or different rules of behavior, sanctions, or other treatment;
- 5) apply any rule concerning the domicile or residence of a student or applicant, including eligibility for fees and tuition;

- 6) aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of gender, gender identity, gender expression, non-conformance with gender stereotypes, or sexual orientation; or
- 7) otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

**D. Sexual Exploitation** - Any act where one person violates the sexual privacy of another or takes unjust or abusive sexual advantage of another without their consent. Sexual exploitation may include, but is not limited to:

- 1) surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- 2) recording, photographing, transmitting, showing, viewing, streaming, or distributing intimate or sexual images, audio recordings, or sexual information without the knowledge and consent of all parties involved; or
- 3) exposing one's genitals or inducing another to expose their own genitals in nonconsensual circumstances.

**E. Dating and Domestic Violence** - A pattern of controlling behaviors used by one partner to control the other partner. There are many forms of dating and domestic violence:

- 1) Physical Abuse - Dating and domestic violence that includes, but is not limited to, hitting, shoving, slapping, pushing, punching, burning, and stabbing. It can also include withholding someone from receiving needed medical care or medication.
- 2) Sexual Abuse - Dating and domestic violence that includes, but is not limited to, forced sex, or forcing someone to have sex without protection, with an object, or with another person.
- 3) Psychological and Emotional Abuse - Dating and domestic violence that includes, but is not limited to, controlling someone's behavior or actions, isolating a person from friends and family, making threats against a person, their family, friends, colleagues, or pets, using social media to make threats, and verbal abuse.
- 4) Economic Abuse - Dating and domestic violence that includes, but is not limited to, taking a partner's money, or not allowing a person, or disrupting a person's ability, to work or go to school.

**F. Stalking** - A course of conduct that is unwanted, unwelcome and unreciprocated that is directed at a specific person that would cause a reasonable person to feel fear, to experience substantial emotional distress, or to fear for their safety or the safety of a third party such as a family member, friend, colleague, or pet. Acts that together constitute stalking may be direct actions or may be communicated by a third party, and can include, but are not limited to, threats of or actual harm to self, others, or property; pursuing or following; non-consensual (unwanted) communication by any means; unwanted gifts; trespassing; and surveillance or other related types of observation. Stalking also includes cyber-stalking through electronic media, such as social networks, blogs, cell phones, or text messages.

Additional examples of stalking behaviors include, but are not limited to:

- (1) Waiting outside a person's class or residence;
- (2) Sending unwanted letters, phone calls, emails, texts, posts to a person;
- (3) Sending information to others about the person; or
- (4) Tracking the person's computer and internet use.

**G. Retaliation** - This policy prohibits acts or words taken against an individual or group of individuals involved in a protected activity. Protected activity includes making a good faith report under this policy; filing an external complaint; or opposing in a reasonable manner and consistent with University policy an action reasonably believed to constitute a violation of this policy. Retaliation may also include acts or words taken against an individual or group of individuals because they have participated in proceedings under this policy.

Retaliation can take many forms including, but not limited to, adverse action or violence, threats, and intimidation that would discourage a reasonable person (under similar circumstances and with similar identities to the Complainant) from engaging in protected activity. Actions in response to a good faith report or response under this policy are considered retaliatory if they have a materially adverse effect on the working, academic, or living environment of an individual, or if they hinder or prevent the individual from effectively carrying out their University responsibilities. All individuals and groups of individuals are prohibited from engaging in retaliation and will be held accountable under this policy.

Concerns or questions about retaliation should be immediately reported to a Title IX investigator or the Title IX Coordinator.

**H. Complicity** – Any act that knowingly aids, facilitates, promotes, or encourages the commission of Prohibited Conduct by another person.

## **I. Additional Guidance Regarding Consent and Incapacitation**

The following definitions clarify key terminology as it is used throughout the policy:

**Consent:** Consent is the voluntary, informed, and freely given agreement, through words and/or actions, to participate in mutually agreed-upon sexual acts. Consensual sexual activity happens when each partner willingly and affirmatively chooses to participate in a particular sexual act.

In evaluating whether consent has been freely sought and given, the University will consider the presence of any force, threat of force, or coercion; whether the Complainant had the capacity to give consent; and whether the communication (through words and/or actions) between the parties would be interpreted by a reasonable person (under similar circumstances and with similar identities) as a willingness to engage in a particular sexual act.

Consent cannot be obtained through physical force or where there is a reasonable belief of the threat of physical force, when one person takes advantage of the physical or psychological limitations of another person, or by taking advantage of another person's incapacitation.

Important points regarding consent include:

- Consent to one act does not constitute consent to another act;
- Consent on a prior occasion does not constitute consent on a subsequent occasion;
- Consent to an act with one person does not constitute consent to an act with any other person;
- The existence of a prior or current relationship does not, in itself, constitute consent; even in the context of a relationship, there must be mutual consent for particular sexual acts;
- Consent can be withdrawn or modified at any time, and sexual contact must cease immediately once consent is withdrawn;

- Consent cannot be inferred from silence, passivity, or lack of resistance, and relying on nonverbal communication alone may result in a violation of this policy; and
- Consent cannot be given by an individual under the legal age of consent.

Incapacitation: Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if they demonstrate that they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination based on the available information.

The University does not expect community members to be medical experts in assessing incapacitation. Individuals should look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. A person's level of intoxication is not always demonstrated by objective signs. However, some signs of intoxication may include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness, or emotional volatility.

A Respondent's voluntary intoxication is never an excuse for, or a defense to, Prohibited Conduct, and it does not diminish the responsibility to determine that the other person has given consent.

## Reporting Obligations

Issues of privacy and confidentiality play important roles in this policy and may affect individuals differently. While they are closely related, the concepts of privacy and confidentiality are distinct terms that are defined below.

**A. Confidentiality** - Confidentiality refers to the protections provided to information disclosed in legally-protected or privileged relationships, including licensed professional mental health counselors, licensed medical professionals, and ordained clergy. These confidential resources can engage in confidential communications under the law when the information is disclosed within the scope of the provision of professional services. When an individual shares information with a confidential resource (on campus or in the community) as a confidential communication in the course of a protected relationship, the confidential resource cannot disclose the information (including information about whether an individual has received services) to any third party without the individual's written permission, or unless required by ethical or legal obligations which compel the professional to reveal such information. For example, information may be disclosed when the individual gives written consent for its disclosure, there is an imminent concern that the individual will likely cause serious physical harm to self or others or poses a threat to the campus community as a whole, or the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18.

Confidential resources submit non-personally-identifying information about Clery-reportable crimes to the Winston-Salem State University Police Department for purposes of the anonymous statistical reporting under the Clery Act.

**B. Privacy** -Privacy refers to the discretion that will be exercised by the University in the course of any investigation or disciplinary processes under this policy. Information related to a report of Prohibited Conduct

may be shared with a limited circle of University employees who need to know in order to assist in the assessment, investigation, and resolution of the report and related issues. University employees receive training in how to safeguard private information.

The University will make reasonable efforts to investigate and address reports of Prohibited Conduct under this policy, and information may be disclosed to participants in an investigation as necessary to facilitate the thoroughness and integrity of the investigation. In all such proceedings, the University will take into consideration the privacy of the parties to the extent reasonably possible.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA). The privacy of an individual's medical and related records generally is protected by the Health Insurance Portability and Accountability Act (HIPAA), excepting health records protected by FERPA. Access to an employee's personnel records is governed by the policy stated in the Employee Handbook.

It is important to understand the different responsibilities of University employees. Every employee is designated as either a Confidential Employee or a Responsible Employee:

**C. Confidential Employee** - Confidential Employees include any employee who is a licensed medical, clinical, or mental-health professional (e.g., physicians, nurses, physician's assistants, psychologists, psychiatrists, professional counselors, and social workers, and those performing services under their supervision), when acting in that professional role in the provision of services to a patient; and any employee providing administrative, operational, and/or related support for such health care providers in their performance of such services. Confidential employees also include clergy and other religious or spiritual advisors when serving in their religious or spiritual capacity and any employee providing administrative, operational, and/or related support to such clergy or other religious or spiritual providers. Confidential Employees will not disclose information about Prohibited Conduct without the individual's permission or as set forth in the Confidentiality section above. When individuals who otherwise may be Confidential Employees receive information outside of the provision of confidential services, the Confidential Employee is required to share that information with the Title IX Office.

**D. Responsible Employee** – With the exception of University employees designated as Confidential Employees, every individual employed by Winston-Salem State and anyone employed or retained under contract in a security or safety position or in a University residence hall is considered to be a Responsible Employee. ALL Responsible Employees are required to report any information regarding a known or suspected violation of this policy to a Title IX Officer as soon as the Responsible Employee learns of it, no matter how they learn of this information.

Student workers are also considered Responsible Employees when they learn of potential violations of this policy in the scope of their employment. Student workers who are Responsible Employees include but are not limited to resident assistants, teaching assistants, graduate assistants, and tutors provided through any University programs or offices.

Responsible Employees must report all information that they have obtained, including the identities of the parties, the date, time and location, and any details about the reported incident to the Title IX Office. Responsible Employees cannot promise confidentiality or withhold information about Prohibited Conduct. Failure by a Responsible Employee to report information regarding possible Prohibited Conduct in a timely manner may subject them to appropriate discipline.

Responsible Employees are not required to report information disclosed: at public awareness events (e.g., “Take Back the Night,” candlelight vigils, protests, “survivor speak-outs,” or other public forums in which students may disclose Prohibited Conduct;) The University may provide information about Title IX rights and available University and community resources and support at public awareness events.

**E. Clery Act Reporting** - Pursuant to the Clery Act, the University includes statistics about certain offenses in its annual security report, and provides those statistics to the United States Department of Education in a manner that does not include any personally-identifying information about individuals involved in an incident. The Clery Act also requires the University to issue timely warnings to the University community about certain crimes that have been reported and which may continue to pose a serious or continuing threat to campus safety. Consistent with the Clery Act, the University withholds the names and other personally-identifying information of Complainants when issuing timely warnings to the University community.

## **Resources & Reporting Options**

All University community members are urged to promptly report information regarding Prohibited Conduct to the University and/or law enforcement. A Complainant or witness will not be reprimanded, retaliated against, or discriminated against in any way for initiating an inquiry or making a good faith report.

A Complainant or witness has many options, including seeking counseling or assistance from a Confidential Employee, making a report under this policy, and/or making a report to law enforcement. The University recognizes that deciding among these options can be difficult and is an intensely personal decision. Complainants and witnesses are encouraged to seek assistance from a Confidential Employee and to explore all potential reporting and support options.

### **A. Emergency Resources and Law Enforcement**

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

#### **1. Law Enforcement Assistance**

University community members are encouraged to immediately contact the WSSU Police Department and/or the Winston-Salem Police Department in order to report potential criminal conduct to law enforcement.

The WSSU Police Department may be reached at:

Old Maintenance Building  
601 S. Martin L. King Jr. Dr.  
Winston-Salem, NC 27110

[336-750-2911](tel:336-750-2911) (emergency)  
[336-750-2900](tel:336-750-2900) (non-emergency)  
[campussafety@wssu.edu](mailto:campussafety@wssu.edu)

The Winston-Salem Police Department may be reached at:

Call 911 (within city limits)

101 North Main Street  
Winston-Salem, NC 27101  
Phone: [336-727-8000](tel:336-727-8000) or 311 within Winston-Salem city limits  
Email: [citylink@cityofws.org](mailto:citylink@cityofws.org)

*Note: that any law enforcement investigation is separate from, and independent of, the University's Title IX administrative investigation. The University's Title IX administrative investigation will proceed simultaneously with any law enforcement investigation, whether by the University's Department of Public Safety or the Winston-Salem Police Department.*

## **2. Health Care Options (Off Campus) to seek treatment for injuries and preventative treatment for STIs**

- Forsyth County Health Department  
799 North Highland Avenue  
Winston-Salem, NC 27101  
336-703-3100
  - POSSE – Prevent Ongoing Spread of STI's Everywhere
- Guildford County Public Health  
1100 Wendover Avenue E.  
Greensboro, NC 27405  
336-641-7777
- Davidson County Health Department  
915 Greensboro St.  
Lexington, NC 27292
- Novant Health Forsyth Medical Center  
3333 Silas Creek Pkwy  
Winston-Salem, NC  
336-718-5000  
(SANE exams offered)
- Wake Forest Baptist Medical Center  
1 Medical Center Blvd.  
Winston-Salem, NC 27157  
336-716-2011  
(SANE exams offered)
- High Point Regional Health Center  
601 N Elm St.  
High Point, NC 27262  
336-878-6000  
(SANE exams offered)
- Novant Health Kernersville  
1750 Kernersville Medical Pkwy  
Kernersville, NC 27284

336-564-4000  
(SANE exams offered)

## **2. Local Rape Crisis Centers**

- Family Services of Forsyth County  
200 S. Broad St.  
Winston-Salem, NC  
336-722-8173
- Family Services of the Piedmont  
315 E Washington St.  
Greensboro, NC 27401  
336-387-6161
- Davie Domestic Violence Services & Rape Crisis Center  
172 S Clement St #2  
Mocksville, NC 27023  
336-751-4357
- Family Services of Davidson County Inc.  
PO Box 607  
Lexington, NC 27293  
336-249-0237

## **B. Campus Confidential Resources**

Licensed University Counselors (Confidential)

The Counseling Center  
A.H. Ray Student Health Services  
Winston-Salem State University  
601 Martin Luther King Jr. Dr. Suite 244  
Winston-Salem, NC 27110  
[336-750-3270](tel:336-750-3270)  
[WSSU Counseling Center](#)

## **C. Other Campus Resources**

- Office of Interpersonal Violence Prevention  
  
Ms. Patricia Eaddy, Director  
301- H Thompson Student Center  
601 Martin Luther King Jr. Dr. Suite 244  
Winston-Salem, NC 27110  
[336-750-3313](tel:336-750-3313)  
[eaddypa@wssu.edu](mailto:eaddypa@wssu.edu)  
[WSSU Office of Interpersonal Violence Prevention](#)

## **D. Reporting Options**

An individual may make a report to the University, to law enforcement, to neither, or to both. Campus Title IX processes and law enforcement investigations operate independently of one another, although the University will coordinate information with the WSSU Police Department and/or local law enforcement when both an administrative proceeding and criminal investigation are on-going.

Anyone may make a report as follows:

- Make a report to a Title IX Officer in person, by telephone, or by email;
- If on campus, contact the WSSU Police Department or Winston-Salem Police Department for assistance in filing a criminal complaint and preserving physical evidence; or
- If off campus, contact local law enforcement to file a criminal complaint.

An individual may pursue some or all of these steps at the same time (e.g., one may simultaneously pursue a Title IX report and a criminal complaint). When initiating any of the above options, an individual does not need to know whether they wish to request any particular course of action nor how to label what happened. As part of a report to the Title IX Office, an individual can also request interim remedial measures and support. University community members are encouraged to consult with the Title IX Coordinator if they have any questions regarding this policy or reporting Prohibited Conduct.

### **1. Reports to Responsible Employees**

As explained above, all University employees, with the exception of those designated as Confidential Employees, are considered to be Responsible Employees. All reports that are brought to the attention of a Responsible Employee are not confidential and must be promptly submitted to the Title IX Coordinator by the Responsible Employee.

### **2. Timeframe for Reporting**

There is no time limit for reporting Prohibited Conduct. University community members are urged to make a report as soon as possible after the conduct has occurred to maximize the University's ability to respond promptly and effectively. Reports under this policy may be made at any time without regard to how much time has elapsed since the incident(s) in question.

If the Respondent is no longer a student or employee at the time of the report, the University may be limited in its ability to take disciplinary action against the Respondent. The University will still seek to meet its Title IX obligations by providing support for the Complainant and taking steps to end the prohibited behavior, prevent its recurrence, and address its effects. The University may assist the Complainant in identifying and contacting law enforcement and other external enforcement agencies.

## **UNIVERSITY ACTION UPON RECEIPT OF A REPORT**

The University is committed to providing a prompt, thorough, equitable, and impartial resolution of all reported violations of this policy. The University uses two processes to resolve reports of Prohibited Conduct under this policy: Disciplinary Resolution, which involves an investigation, adjudication, and, if appropriate, the

imposition of sanctions, and Alternative Resolution, which includes informal or restorative options for resolving reports that does not involve the possibility of disciplinary action against a Respondent. The Title IX Coordinator will determine the appropriate resolution process after making an initial assessment of the reported information, considering the stated preference of the Complainant regarding process, campus safety, and the University's obligation to maintain an environment free from harassment and discrimination.

The initial response by the Title IX Office will include an initial assessment of the context and circumstances of the report, and identification of reasonably available and appropriate interim measures for Complainant and Respondent.

## Disciplinary Resolutions

The University is committed to providing a prompt, thorough, equitable, and impartial resolution of all reported violations of this policy. The University uses two processes to resolve reports of Prohibited Conduct under this policy: Disciplinary Resolution, which involves an investigation, adjudication, and, if appropriate, the imposition of sanctions, and Alternative Resolution, which includes informal or restorative options for resolving reports that does not involve the possibility of disciplinary action against a Respondent. The Title IX Coordinator will determine the appropriate resolution process after making an initial assessment of the reported information, considering the stated preference of the Complainant regarding process, campus safety, and the University's obligation to maintain an environment free from harassment and discrimination.

### Interim Measures

The initial response by the Title IX Office will include an initial assessment of the context and circumstances of the report, and identification of reasonably available and appropriate interim measures for a Complainant and a Respondent.

Interim remedial (to remedy the effect) measures may include:

- Access to counseling and medical services
- Assistance in obtaining a sexual assault forensic examination
- Assistance in arranging rescheduling of exams and assignments and extensions of deadlines
- Academic support
- Assistance in requesting long-term academic accommodations through the Office of Student Services, if the Complainant qualifies as an individual with a disability
- Change in the Complainant's campus housing
- Assistance navigating off campus housing concerns
- Imposition of a "no contact order," an administrative remedy designed to curtail contact and communications between two or more individuals
- Referral to resources which can assist in obtaining a protective order, or other legal remedy
- Referral to resources which can assist with financial aid other administrative concerns
- Any other remedial measure that can be used to achieve the goals of this policy.

**Interim remedial measures are available to the Complainant regardless of whether the Complainant pursues an investigation or seeks formal disciplinary action.**

The University will consider a number of factors in determining which measures to take, including the needs of the student or employee seeking remedial and/or protective measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the Complainant; whether the Complainant and the Respondent share the same residence hall, academic course(s), or job location(s); and whether judicial measures have been taken to protect the Complainant (e.g., protective orders).

Requests for interim measures may be made by the Complainant to the Title IX Office. The Title IX Office is responsible for ensuring the implementation of interim measures and coordinating the University's response with the appropriate offices on campus. The Title IX Office has the discretion to impose and/or modify any interim measure based on all available information, and is available to meet with a Complainant or Respondent to address any concerns about the provision of interim measures. The

University will maintain the privacy of any remedial and protective measures provided under this policy to the extent practicable and will promptly address any violation of interim remedial or protective measures.

All individuals are encouraged to report to the Title IX Office any concerns about the failure of another to abide by any restrictions imposed through an interim protective measure

At the conclusion of the initial assessment the University will proceed with one of the following options:

- Proceed with an investigation under the Disciplinary Resolution process. This will occur when a Complainant requests an investigation; where the Title IX Coordinator determines that an investigation must be pursued even when a Complainant requests that no investigation be pursued; or where Alternative Resolution is not appropriate or available.
- Proceed with Alternative Resolution. This will always require the consent of the Complainant. The consent of the Respondent is also required when the form of resolution involves the Respondent.
- If outside the scope of this policy, refer the matter to another appropriate office or department for resolution under the relevant policy.

When the Title IX Coordinator decides to initiate an investigation, impose interim protective measures i.e. interim suspension, or take any other action that impacts a Respondent, the Title IX Coordinator will also ensure that Respondent is notified and receives written information on available resources and options, consistent with the list outlined above.

### Request for Anonymity

In order to protect the safety of the campus community, the Title IX Coordinator may determine that it is necessary to proceed with an investigation even if a Complainant specifically requests that the matter not be investigated. The Title IX Office may also initiate an investigation of potential violations of this policy even absent a formal report or identified Complainant or Respondent, and even if a report has been withdrawn. In such a circumstance, the Title IX Coordinator will take into account the Complainant's articulated concerns, the safety of the campus community, fairness to all individuals involved, and the University's obligations under Title IX.

A Complainant may request that their name or other personally-identifiable information not be shared with a Respondent, that no investigation be pursued, or that no disciplinary action be taken. In these instances, before taking any further investigative steps, a member of the Title IX Office will discuss any concerns with the Complainant and seek to address and remedy barriers to reporting based upon concerns about retaliation or other lack of clarity in understanding procedural options and potential outcomes.

The Title IX Coordinator will balance the Complainant's request against the following factors in reaching a determination as to whether the University's need to proceed with an investigation outweighs the considerations expressed by the Complainant:

- the totality of the known circumstances;
- the nature and scope of the alleged conduct, including whether the reported behavior involves the use of a weapon or drugs;

- the respective ages and roles of the Complainant and Respondent;
- the risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;
- whether there have been other reports of Prohibited Conduct or other misconduct by the Respondent; • whether the report reveals a pattern of misconduct related to Prohibited Conduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- the Complainant's interest in the University's not pursuing an investigation or disciplinary action and the impact of such actions on the Complainant;
- whether the University possesses other means to obtain relevant evidence;
- fairness considerations for both the Complainant and the Respondent;
- the University's obligation to provide a safe and non-discriminatory environment; and • any other available and relevant information.

The Title IX Coordinator will consider what steps may be possible or appropriate when a Respondent is unknown or the Complainant requests anonymity, and what other measures or remedies might be considered to address any effects of the reported behavior on the campus community. The Title IX Coordinator will make a determination regarding the appropriate method of resolution under the policy. The University will seek resolution consistent with the Complainant's request, if it is possible to do so, based upon the facts and circumstances, while also protecting the health and safety of the Complainant and the University community.

Where the Title IX Coordinator determines that a Complainant's request(s) can be honored, the University may still take other appropriate steps to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the Complainant and the University community. Those steps may include offering appropriate remedial measures to the Complainant, providing targeted training and prevention programs, providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred, and/or providing or imposing other remedies. The Title IX Coordinator may also request that a report be re-opened and pursued under this policy if any new or additional information becomes available, and/or if the Complainant later decides that they would like for the University to pursue an investigation.

In those instances when the Title IX Coordinator determines that the University must proceed with an investigation despite the Complainant's request that it not occur, the Title IX Coordinator will provide written notification to the Complainant that the University intends to initiate an investigation. The Complainant is not required to participate in the investigation or in any of the actions taken by the University.

The University's ability to investigate and respond fully to a report may be limited if the Complainant requests anonymity or declines to participate in an investigation. The University will, however, pursue other steps to limit the effects of the potential Prohibited Conduct and prevent its recurrence. In all cases, the final decision on whether, how, and to what extent the University will conduct an investigation and whether other interim remedial or protective measures will be taken in connection with a report of Prohibited Conduct will be made in a manner consistent with this policy.

**University Amnesty Statement:** The University recognizes that an individual who has been drinking or using drugs at the time of the incident may be hesitant to make a report because drinking and drug use may be a violation of the Student of Code of Conduct and/or local law. In order to encourage reporting and remove barriers to doing so, any individual who reports Prohibited Conduct under this policy, either

as a Complainant or as a third party witness, 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, safety or well-being of any other person at risk. The University may, however, advise a student to engage in an educational discussion regarding the dangers of alcohol consumption or drug use or to pursue other educational and counseling activities regarding such use.

## General Information Regarding Disciplinary Resolution

### **A. Timeframe for Investigation and Resolution**

The Title IX Office endeavors to complete the investigation and resolution process within a reasonable timeframe - approximately 60 calendar days following the notice of the investigation. This policy outlines reasonable timeframes for the major stages of the investigation and resolution process. The University may extend or modify these timeframes within the 60 day period provided that the investigation is completed within a reasonable time. The Title IX Coordinator, in consultation with the investigator, has the authority to determine whether an extension is required or warranted by the circumstances. If an investigation or resolution will not be completed within 60 days from the notice of investigation, the University will provide written notice to the parties which will include a statement of the reason(s) necessitating the extension.

An extension may be required to ensure the integrity and thoroughness of the investigation; to comply with a request by law enforcement; in response to the unavailability of the parties or witnesses; or for other legitimate reasons, such as intervening breaks in the University calendar, University finals periods, the complexity of the investigation, the volume of information or length of the written record, and/or the severity and extent of the alleged misconduct. While requests for delays for good cause by the parties may be considered, the University cannot unduly or unreasonably delay the prompt resolution of a report under this policy. Reasonable requests for delays by the parties, if granted, will serve to extend the 60 calendar day time period for resolution of the report.

Although cooperation with law enforcement may require the University to suspend the fact-finding portion of a Title IX investigation temporarily, the University will promptly resume its Title IX investigation upon notification from the law enforcement agency that proceeding with the Title IX investigation will not jeopardize the law enforcement investigation. The University will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation, and will promptly initiate the process of assessing and providing appropriate interim remedial measures for the Complainant.

Investigations will proceed according to the timeframes in this policy to the extent possible during the summer and at other times when classes at the University are not in session, or during holidays, or other scheduled days when the University is closed. The Title IX Office will work with the parties to balance the need for promptness and the preference for in-person meetings regarding the investigation. Timeframes for all phases of the disciplinary process including the investigation, any related disciplinary proceedings, and any related review of the finding, apply equally to both Complainant and Respondent.

### **B. Expectations of the Parties**

The University affords both the Complainant and the Respondent an equal opportunity to participate fully in the investigation and adjudication process, including the opportunity to receive a written notice of investigation; to participate in the investigation; to review and present information and evidence; to be accompanied by an advisor of their choice to any meeting; to timely and equal access to information that will be used in disciplinary proceedings; to timely notice of meetings at which their presence will be requested or required; to simultaneous written notice of the outcome, sanction, and rationale; and to seek review of the finding as stated in this policy.

All University community members are expected to provide truthful information in any report or proceeding under this policy. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated or no policy violation is found to have occurred.

Winston-Salem State University expects all members of the University community to cooperate fully with the investigation and disciplinary procedures. It is understood that there may be circumstances in which a Complainant or Respondent wish to limit their participation, and the University will respect the choice of the Complainant or Respondent as to how to engage in proceedings under this policy. The University may, however, move forward with an investigation and disciplinary action without the participation of one or more parties. Should the Respondent opt not to participate, that refusal will not preclude the continuation of the investigation process and a resolution of the investigation, including possible sanctions against the Respondent if a violation of this policy is found by a preponderance of the evidence.

If a Complainant or Respondent chooses not to answer any or all questions in an investigation for any reason, the University will continue its process; and the University will issue any discipline or sanctions, as appropriate. The University will not draw any adverse inference from a Complainant's or Respondent's decision not to participate in the investigation or any form of resolution under this policy. However, the Complainant and Respondent should be aware that declining to participate in the investigation may impact the timing and outcome of the investigation.

At any time, the University may place an administrative hold on the Respondent's University transcript, or defer or withhold the award of the Respondent's degree. Although a Respondent may withdraw from the University while the investigation is pending, the Title IX Coordinator may decide to proceed with the investigation and resolution process, and may impose appropriate sanctions, up to and including expulsion from the University. The University may note on the Respondent's transcript that the withdrawal is pending investigation.

### **C. Advisor of Choice**

Throughout the investigation and resolution, all parties have the right to consult with an advisor of their choosing. The advisor may be any person, including an attorney, who is not otherwise a party or witness involved in the investigation. The parties may be accompanied by their chosen advisor at any meeting or proceeding related to the investigation and resolution of a report under this policy.

**See Requirements and Guidelines to Follow for the Participation of a Licensed Attorney or Non-Attorney Advocate during Disciplinary Proceedings**

### **D. Safeguarding Privacy**

Individuals involved in investigations or disciplinary proceedings under this policy are encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation. While discretion regarding the process is important, Complainants and Respondents are not restricted from discussing and sharing information with others who may support or assist them during the process. However, doing so with the intent to harass another individual, retaliate against another individual who is involved in the investigation, or to influence the outcome of the investigation, will subject an individual to sanctions under this policy.

All participants in any investigation or other proceeding under this policy, including all parties, are encouraged to maintain the privacy of information gathered or learned through their participation in the process.

## **E. Investigation**

### **Investigator**

When the University receives a report alleging a violation of this policy, the Title IX Coordinator will appoint one or more investigators to conduct a prompt, thorough, fair, and impartial investigation. The investigator may be a University employee and/or an experienced external investigator. Any investigator used by the University will receive annual training on this policy and on the issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Complainants while promoting accountability. The investigator will be impartial and free from conflict of interest or bias.

## **Investigation Procedures**

Upon submission of a report to the Title IX Office, a prompt, thorough, and impartial review will be conducted.

1. In the event that a report of alleged sex discrimination or sexual misconduct is made to the Title IX Office, the Title IX Coordinator or designee will review the report and determine if the allegations are related to sex discrimination or sexual misconduct. If they are, and if the Complainant wishes, a private interview will be conducted by the Title IX Coordinator or designee with the Complainant to capture the conduct and the nature of the remedy desired.
2. Once the initial information is gathered, a threshold determination will be made whether, presuming the facts underlying the allegation(s) to be true and accurate, the substance of the allegation(s) constitutes a violation of this Policy. This preliminary determination will typically be made within ten class days from the date of the initial intake, and may include a determination of whether a formal investigation is required and/or whether appropriate interim measures are necessary in order to comply with the requirements of federal and state law.
3. The investigation may include, but is not limited to, interviewing witnesses, collecting documentation, and seeking any additional information as necessary. The Title IX Coordinator or designee and Title IX Investigator shall have unrestricted access to all pertinent materials, records, reports, and documents within the possession or control of the University, and shall be afforded the opportunity to interview all persons possessing relevant information.
4. The Deputy Title IX Coordinator or the Title IX Investigator, in conjunction with the Title IX Coordinator, may refer the Complainant to any other appropriate investigating authority or resources for assistance if the allegations are not sufficient to warrant an investigation. Reported incidents that do not rise to the level of adjudication through a Student Conduct hearing involve those (including but not limited to) where the Responding Party's name is not identified or the Complainant does not wish to proceed with a formal process.
5. At the conclusion of the investigation, the investigator will prepare a written summation of their findings and submit it to University's Office of Student Conduct
6. The Respondent may choose to plead responsible to all charges and waive his/her right to a hearing before a judicial panel. In that event, the Title IX Coordinator, or his/her designee, will consult with appropriate officials, inclusive of the Dean of Students, and other parties involved and determine the appropriate sanction. A written document stating that the Respondent waives his/her right to a hearing and will accept the sanctions levied by the Title IX Coordinator, or his/her designee, must be signed by the Respondent and made a part of the record.
7. If a student chooses to move forward with a judicial hearing, a three-five person panel consisting of faculty and staff members will hear the case and determine responsibility. Both the Complainant and the Respondent shall have the right to attend the hearing. All witnesses, including the parties, may be cross-examined. However, the parties will not be allowed to personally question or cross-examine each other during the hearing; all cross-examination of parties must be done through the Committee Chair.

## **Presumption of Non-Responsibility**

It shall be presumed that there has been no violation of any University policy by a Respondent unless and until a thorough and comprehensive investigation has been conducted and there is a final administrative finding, by a preponderance of the evidence, or an admission of responsibility for a policy violation.

### **Prior Sexual History**

The sexual history of the Complainant or Respondent will never be used to prove character or reputation. Evidence related to the prior sexual history of the parties is generally not used in determining whether a violation of this policy has occurred and will only be considered under limited circumstances when relevant and appropriate. For example, if consent is at issue, the sexual history between the parties may be relevant to determine the nature and manner of communications between the parties, which may inform the determination whether consent was sought and reasonably appeared to have been given during the incident in question. As set forth in the consent definition, even in the context of a relationship, consent to one sexual act does not constitute consent to another sexual act, and consent on one occasion does not constitute consent on a subsequent occasion. In addition, prior sexual history may be relevant to explain injury, to provide proof of a pattern, or to address another specific issue raised in the investigation. The investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

### **Cooperation with Law Enforcement**

If there is a criminal investigation or other legal proceeding, the University may be obligated to provide investigative records to law enforcement or a court in response to a subpoena, search warrant, or court order.

### **Standard of Proof**

A finding of responsibility based on a preponderance of evidence means that based on all relevant evidence and reasonable inferences from the evidence, the greater weight of information indicates that it was more likely than not the policy violation occurred.

## **F. Procedures for Sanctioning**

The University will take reasonable steps to end Sex Discrimination, Sexual Misconduct, Retaliation, and Complicity; to prevent recurrence; and to remedy the effects. Any person who is found to have violated this Policy shall be subject to disciplinary action, up to and including expulsion from educational programs. The specific penalties imposed on violators will be commensurate with the level of offense and in accordance with applicable laws and University regulations, policies, and procedures. The University recognizes that some offenses are so serious that suspension or expulsion may be warranted on the first occurrence. Factors that will be considered in determining the appropriate level of discipline include:

- Seriousness of offense (e.g., effect of the misconduct on the University's mission, isolated or repeated offense, deliberate or inadvertent misconduct, etc.);
- Prior misconduct (e.g., disciplinary record, similarity of past offenses to current misconduct);
- Consistency of Penalty (e.g., is the disciplinary action consistent with treatment of similar misconduct in other cases);
- Potential for rehabilitation (e.g., self-disclosure prior to investigation, seeking assistance with problem);

- Effectiveness of a lesser sanction; and
- Other aggravating and mitigating circumstances.

# Requirements and Guidelines to Follow for the Participation of a Licensed Attorney or Non-Attorney Advocate during Disciplinary Proceedings

In order for a licensed attorney or non-attorney advocate to represent a student(s) or student organization(s) in disciplinary proceedings, the student(s) or student organization(s) must provide The Office with the three (3) documents described below. These three (3) documents must be submitted to The Office **no later than two (2) days before the scheduled Winston- Salem State University Student Conduct Council Hearing**. Consistent with this interpretive guidance and the rules, policies, or guidelines governing Winston-Salem State University's disciplinary procedure, licensed attorneys or non-attorney advocates may fully participate in disciplinary procedures only to the extent afforded to the student or student organization they represent. Additionally, licensed attorneys and non-attorney advocates may not delay, disrupt, or otherwise interfere with a disciplinary procedure.

An attorney or other individual representing Winston-Salem State University may participate in disciplinary procedures in which a licensed attorney or non-attorney advocate represents a student or a student organization.

The following are requirements that must be completed before information may be disseminated to the student's advocate/advisor/attorney: **1) Notice of Representation and 2) FERPA Authorization**.

## 1. Notice of Representation

Students or student organizations that plan to have a licensed attorney or non-attorney advocate represent them during a disciplinary procedure must notify the administration that administers the disciplinary procedure (ex. the Office of Student Conduct, Office of Dean of Students, etc.) in writing of the attorney's or advocate's planned participation in a disciplinary procedure. This notice must specify:

- The identity of the licensed attorney or non-attorney advocate
- Whether the individual is a licensed attorney or a non-attorney advocate; and
- An address, telephone number, and email address where the licensed attorney or non- attorney advocate can be reached.

To notify our office of who will be your attorney or non-attorney/advocate during the disciplinary proceedings, you must submit a certification using the attached "*Notice of Attorney or Non- Attorney/Advocate Representation*" form signed by the licensed attorney or non-attorney advocate stating that the licensed attorney or non-attorney advocate has read in their entirety and understood the following documents:

- The applicable Disciplinary or Conduct Rules
- Any additional rules, policies, or guidelines that Winston-Salem State University has enacted for its Disciplinary Procedure consistent with this Interpretive Guidance
- Section 700.4.1. of the UNC Policy Manual.

## 2. FERPA Authorization for Student(s) Involved in Disciplinary Process

In order for a licensed attorney or a non-attorney advocate to represent a student or student organization during a disciplinary procedure or to speak with an official of Winston-Salem State University regarding the student or the members of a student organization, the student(s) involved in the disciplinary process must complete and submit a written authorization that meets the requirements of a valid consent as specified by the Family Educational Rights and Privacy Act (FERPA). Even if a student executes a valid FERPA consent authorizing the licensed attorney or non-attorney advocate to receive information or documents regarding the student, Winston-Salem State University may at all times correspond directly with the student or student organization. It is the student's or student organization's responsibility to communicate and share information with a licensed attorney or non- attorney advocate. The Winston-Salem State University office that administers the disciplinary procedure can supply students with an approved authorization form that meets the elements of a valid consent in accordance with FERPA. Please see attached forms.

If you have any comments, questions, or concerns, feel free to contact the Office of the Dean of Students or Office of Student Conduct at 336-750-3356.



Notice of Attorney or Non-Attorney/Advocate Representation

In accordance with N.C.G.S. 116-40.11 students or student organizations accused of violating the Student Code of Conduct may be represented, at their own expense, by a licensed attorney or non-attorney advocate of their own choosing. In order for a licensed attorney or non-attorney advocate to represent a student (s) or student organization (s) during a disciplinary procedure, the respondent (student or student organization) must submit this completed form to the Office of the Dean of Students or office generating the hearing notification letter. The completed form must be submitted **no later than two (2) days before the scheduled Winston-Salem State University disciplinary proceeding (e.g. Administrative or Student Conduct hearings).**

In addition to the documents listed below, the student or student organization (respondent) must complete and submit to the Office of the Dean of Students the Family Educational Rights and Privacy Act (FERPA) Release form, which is attached to the hearing notification letter. The FERPA Release form must be submitted no later than two (2) days before the scheduled hearing conference.

I. Attorney or Non-Attorney Advocate Information

Name: \_\_\_\_\_ Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

Licensed Attorney: \_\_\_\_\_ Yes \_\_\_\_\_ No

Non-Attorney Advocate Relationship to Student: \_\_\_\_\_

II. Certification

In preparation to participating in any University disciplinary proceeding, the attorney or non-attorney advocate must initial each statement and sign below, acknowledging that you have read, understood, and agreed to comply with each of the following documents:

\_\_\_\_\_ The applicable Disciplinary or Conduct Rules

\_\_\_\_\_ Any rules, policies, or guidelines that Winston-Salem State University has enacted for its Disciplinary Procedure consistent with this Interpretive Guidance

\_\_\_\_\_ Section 700.4.1. of the UNC Policy Manual

By signing below, I acknowledge that I have read, and understood the above-listed documents. I further understand that this is an administrative process and that neither the formal rules of civil procedure nor the rules of evidence apply. The only evidence that applies in these proceedings is the preponderance of information.

\_\_\_\_\_  
Attorney or Non-Attorney Advocate's Signature

\_\_\_\_\_  
Date

Updated August 2016

This form is for use in disciplinary proceedings held by designated hearing officers and/or university officials from the Office of the Dean of Students, Office of Student Conduct, and Office of Housing and Residence Life.



**Release of Academic/Disciplinary Information**

I, \_\_\_\_\_ (Banner ID \_\_\_\_\_),  
authorize Winston-Salem State University to release the information designated below in accordance with  
the Family Educational Rights and Privacy Act of 1974 (Buckley Amendment), as amended, to the individual  
or entity named below, solely for the purposes indicated:

Type of Information to be Disclosed:

- Transcript Disciplinary
- Records
- Recommendations for Employment or Admission to Other Schools All
- Records
- Other (Specify) \_\_\_\_\_

Sole Purpose for Information to be Released:

- Family Communications about University Experience
- Employment
- Admission to an Educational Institution
- Professional Certification or Licensure
- Other (Specify) \_\_\_\_\_

Individual or Entity to Receive Information:

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_

*I understand this information may be released orally or as copies of written records. I understand I have the right to inspect any written records released pursuant to this Release (except for parents' financial records and certain letters of recommendation for which I have waived my inspection rights). I understand I may revoke this Release prospectively.*

\_\_\_\_\_  
**Student's Signature**

\_\_\_\_\_  
**Date**