

## **WOFFORD COLLEGE NONDISCRIMINATION AND ANTI-HARASSMENT POLICY AND PROCEDURES**

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**ARTICLE I. Introduction**

**Section 1.01 Policy Overview**

Wofford College (“the College”) is committed to providing an educational and work environment, including programs and activities, free from discrimination, harassment, and retaliation. This Policy, and the procedures herein, have been developed to reaffirm this commitment; comply with applicable federal and state laws and regulations; and provide a prompt, fair, and impartial process for addressing reports of discrimination and harassment on the basis of protected class status.

**Section 1.02 Administrative Contacts**

Individuals who would like to submit a formal complaint or a report of an alleged violation of this Policy or who have questions about the application of this Policy should contact Wofford’s Title IX Coordinator or an Institutional Equity Case Coordinator:

Matthew Hammett  
 Director for Civil Rights, Title IX Compliance, & Student Risk Assessment  
 Title IX Coordinator  
 429 North Church St  
 Snyder House  
 Spartanburg, SC 29303  
 Phone: (864) 597-4048  
 Email: [hammettmk@wofford.edu](mailto:hammettmk@wofford.edu)

Dr. James Stukes  
 Institutional Equity Case Coordinator  
 429 North Church St  
 Michael S. Brown Village Center, First Floor  
 Spartanburg, SC 29303  
 Phone: (864) 597-4406  
 Email: [stukesje@wofford.edu](mailto:stukesje@wofford.edu)

The College has determined that the following administrators are Officials with Authority<sup>1</sup> to address and correct harassment, discrimination, and/or retaliation. In addition to the Coordinators listed above, the Officials with Authority listed below may accept a report, which will then be forwarded to the Title IX Coordinator:

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<sup>1</sup> “Official with Authority” and other terms used throughout this Policy have specific meanings as defined in Exhibit A.

Richard Johnson  
Director of Athletics  
429 North Church St  
Richardson Physical Activities Building  
Phone: (864) 597-4090  
Email: johnsonra@wofford.edu

Shannon Knupp  
Interim Director of Human Resources  
429 North Church St  
Joe E. Taylor Athletics Center  
Spartanburg, SC 29303  
Phone: (864) 597-4277  
Email: knuppsl@wofford.edu

Sandra Rouse  
Vice President of Campus Life and Student Development  
429 North Church St  
Mungo Student Center, Second Floor  
Spartanburg, SC 29303  
Phone: (864) 597-4040  
Email: rousesa@wofford.edu

Nayef Samhat  
President  
429 North Church St  
DuPre Administration Building, Second Floor  
Spartanburg, SC 29303  
Phone: (864) 597-4010  
Email: samhatnh@wofford.edu

Tim Schmitz  
Interim Provost  
429 North Church St  
DuPre Administration Building, Second Floor  
Spartanburg, SC 29303  
Phone: (864) 597- 4020  
Email: schmitztj@wofford.edu

Wofford College has additionally classified all employees, with the exception of Confidential Resources, as Mandatory Reporters who are required to report to the Title IX Coordinator reports, information, or knowledge related to Sexual Harassment<sup>2</sup> as defined in Section 3.03 of this Policy. Additional information related to the duties of Mandatory Reporters can be found in Section 4.02.

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<sup>2</sup> *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. See Section 3.03 for greater detail.

Individuals may inquire externally to the Department of Education's Office of Civil Rights (OCR) at the following addresses:

Office for Civil Rights  
U.S. Department of Health and Human Services  
400 Maryland Avenue, SW  
Washington, DC 20202-1475  
Phone: 202-453-6020 Fax: 202-453-6021  
Email: [ocr.dc@ed.gov](mailto:ocr.dc@ed.gov)

Employees and applicants for employment may also inquire externally to the United States Equal Employment Opportunity Commission at the following addresses:

U.S. Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507  
Phone: 202-663-4900  
Email: [info@eeoc.gov](mailto:info@eeoc.gov)

### **Section 1.03 Scope of Policy**

Wofford College prohibits all forms of discrimination and harassment as defined in Article III. This Policy applies to all allegations of discrimination as defined in Article III of this Policy. When an alleged violation of this Policy is reported, the allegations are subject to resolution using the procedures detailed herein.

This Policy applies to students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, and invitees. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this Policy.

This Policy applies to Wofford's educational program and activities, to conduct that takes place on the campus or on property owned or controlled by Wofford, at Wofford-sponsored events, or in buildings owned or controlled by Wofford's recognized student organizations.

This Policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Wofford's educational program. Wofford may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator or their designee determines that the conduct affects a substantial College interest. A substantial College interest includes:

- Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- Any situation that is detrimental to the educational interests or mission of the College.

Regardless of where the conduct occurred, the College will review all reports to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in a sponsored program or activity.

When the Respondent is a current Wofford student or employee, resolution may be available regardless of the status of the Complainant, who may or may not be a member of the Wofford community. If the Respondent is not a current student or employee, the College will use its discretion to determine appropriate measures to be taken, which may include investigating, assisting the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local law enforcement or Campus Safety if the individual would like to file a police report.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can may assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to advocate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the College where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant. In addition, the College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Wofford property and/or events.

All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers.

Regardless of the status of the Respondent, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

In the case of allegations of conduct prohibited by this Policy, unless otherwise stated, this Policy supersedes and applies in lieu of all other procedures and policies set forth in other College documents.

#### **Section 1.04 Period of Limitations**

A current Wofford employee or student may file a Report of discrimination or harassment that occurred at any time, regardless of the length of time since the conduct was alleged to have occurred. Former Wofford employees or students may also file a Report of discrimination or harassment concerning alleged violations of this Policy that occurred during their years of employment or enrollment, regardless of the length of time since the conduct was alleged to have occurred. The Title IX process may not, however, be used to file a Report concerning matters that occurred after the Complainant is no longer employed by the College or if the Complainant is no longer participating in a Wofford educational program. For more, please see Section 7.01.

The College strongly encourages individuals to file reports promptly in order to preserve evidence for a potential legal or disciplinary proceeding. A delay in filing a report may compromise the subsequent investigation, particularly if neither the Complainant nor the Respondent is employed by the College or enrolled as a student at the time.

When reports are significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy), actions to address the report are at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

The Title IX Coordinator has the discretion to re-open a case at any time should germane new evidence become available that the Title IX Coordinator determines would significantly impact the outcome of the case.

### **Section 1.05 Policy Revisions**

The College reserves the right to make changes to this Policy at any time, as necessary, and once those changes are posted on the College's website, they are in effect. Conduct reported to have occurred prior to the implementation of this Policy will be adjudicated pursuant to the procedures listed herein, using the definitions of prohibited conduct in place when the alleged conduct occurred. During the resolution processes, the Title IX Coordinator or their designee may make minor modification to procedures that do not materially jeopardize the fairness owed to any party. The Title IX Coordinator may also vary procedures materially with notice upon determining that changes to law or regulation require alterations not reflected in this document.

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This document does not create legally enforceable protections beyond the protection of the background South Carolina and federal laws which frame such policies and codes, generally.

## **ARTICLE II. Statements of Policy**

### **Section 2.01 Policy on Nondiscrimination**

Wofford College does not discriminate on the basis of race, color, creed, religion, sex, age, national origin, disability, veteran status, sexual orientation, or any legally protected class. (Wofford Board of Trustees, adopted October 2012). The College complies with all federal and state civil rights laws and regulations prohibiting discrimination in private institutions of higher education.

This Policy has been developed to reaffirm the College's commitment to nondiscrimination, define community expectations, and outline the College's response to reports of discrimination. In accordance with the College's nondiscrimination statement, the College does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of:

- Race,
- Color,
- National origin,
- Ethnicity,

- Citizenship/immigration status,
- Creed,
- Disability,
- Religion,
- Age,
- Sex (including, but not limited to, sex assigned at birth, gender expression, gender identity, and pregnant or parenting status),
- Sexual orientation,
- Veteran or military status (including disabled veteran, recently separated veteran, active-duty wartime or campaign badge veteran, and Armed Forces Service Medal veteran),
- Predisposing genetic characteristics (an inherited genetic trait believed to predispose one to a disease or disability),
- or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any resolution process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This Policy covers nondiscrimination in both employment and access to educational opportunities. Any member of the Wofford community whose acts deny, deprive, or limit the educational, employment, social or residential access, benefits, and/or opportunities of any member of the Wofford community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of this Policy.

When reported to the College, any such discrimination will be promptly and fairly addressed and remedied according to the processes described within this Policy.

### **Section 2.02 Individuals with Disabilities**

The College will make arrangements to ensure that individuals with disabilities are provided reasonable and appropriate accommodations, to the extent necessary and available, to participate in the procedures outlined in this Policy. Requests for accommodations must be made to and coordinated through Wofford's Office of Accessibility Services.

### **Section 2.03 Prohibition on Providing False Information or Interfering with an Investigation**

Any individual who knowingly files a false complaint (as opposed to allegations which, even if erroneous, are made in good faith) under this Policy or who interferes with an investigation may be subject to disciplinary action. Interference with an investigation may include, but is not limited to, the following:

- Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- Removing, destroying, or altering documentation relevant to the investigation; or
- Providing false or misleading information to College officials who are involved in the investigation and resolution of a complaint or encouraging others to do so.



#### **Section 2.04 Adjudication of Other Conduct**

Alleged misconduct that is related to conduct prohibited by this Policy, even if such related misconduct is not, when standing alone, governed by this Policy, may be adjudicated under this Policy. Similarly, complaints of Retaliation, providing false information, and counterclaims by a Respondent may be adjudicated in the same proceeding as the original complaint or in a separate proceeding. Determinations regarding adjudication of related misconduct will be made by the Title IX Coordinator, assigned Institutional Equity Case Coordinator, and appropriate administrators.

Alleged misconduct that is related to conduct prohibited by this Policy *and* alleged misconduct that is not related to conduct prohibited by this Policy may be adjudicated through other appropriate offices/processes at the same time that conducted is being adjudicated through the processes herein.

#### **Section 2.05 Discrimination, Harassment, Academic Freedom, and Freedom of Expression**

Students, staff, and faculty are entitled to learn, live, and work in an educational and employment environment that is free of discrimination and harassment. This Policy is not intended to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters protected by academic freedom. When speech or conduct is protected by academic freedom, it will not be considered a violation of this Policy, though remedies may be offered to those impacted.

Additionally, speech that is otherwise protected under Wofford's Student Code of Rights and Responsibilities and other policies and procedures will not be adjudicated under this Policy, though remedies may be offered to those impacted.

#### **Section 2.06 Offensive Conduct that Does Not Violate this Policy**

The College reserves the right to address reported conduct that does not or would not rise to the level of a violation of this Policy. Addressing such reports will not result in the imposition of discipline under this Policy, but the College may conduct educational conversations, implement remedial actions, organize mediated conversations, and/or effectuate other informal resolution mechanisms. Steps may be taken by the Title IX Coordinator solely or in collaboration with other offices or referred to other administrators to be addressed.

#### **Section 2.07 Amnesty**

The College considers the reporting and adjudication of conduct prohibited by this Policy to be of paramount importance. The College does not condone underage drinking or use of illegal drugs. However, the College will extend amnesty to Complainants, Respondents, third-party reporters, participating witnesses, and those assisting Complainants from punitive sanctioning for illegal use of drugs and/or alcohol.

Amnesty does not apply to more serious allegations, such as physical abuse of another person or illicit drug distribution.

## **ARTICLE III. Definitions of Prohibited Conduct**

### **Section 3.01 Overview**

Students and employees are entitled to an employment and educational environment that is free of discrimination and harassment. As noted in Section 2.05, this Policy is not meant to prohibit educational content or discussions covered under principles of academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under Wofford policy. When speech or conduct is protected by academic freedom or protected under other College policies and procedures, it will not be considered a violation of College policy, though supportive measures will be offered to those impacted.

Except as otherwise noted, definitions of conduct prohibited by this Policy apply when the individual reported to have experienced the misconduct is a member of any protected class (*see* Section 2.01) *and* the report falls within the scope of this Policy (*see* section 1.03).

### **Section 3.02 Discriminatory Harassment**

Discriminatory harassment constitutes a form of discrimination that is prohibited by College policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law when it creates a hostile environment.

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that, under current Title IX regulations, must meet two characteristics to qualify for consideration as a Title IX violation: the behavior must be severe or pervasive *and* objectively offensive.

### **Section 3.03 Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of South Carolina regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Wofford College has adopted the following definitions in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

Acts of Sexual Harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as conduct on the basis of sex that satisfies one or more of the following:

- A. Quid Pro Quo Sexual Harassment:** An employee of Wofford conditions the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct.

**B. Hostile Environment Sexual Harassment:** Unwelcome conduct determined by a reasonable person to be so severe *and* pervasive *and* objectively offensive that it effectively denies a person equal access to Wofford's education program or activity.<sup>3</sup>

**C. Sexual assault, defined as:**

- i. Sex Offenses, Forcible: Any sexual act directed against another person without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
  - a. *Forcible 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. *Forcible Sodomy:* Oral or anal sexual intercourse with another person, forcibly and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which 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:* The use of 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 (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - d. *Forcible Fondling:* The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- ii. Sex Offenses, Non-forcible:
  - a. *Incest:* Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by South Carolina law.
  - b. *Statutory Rape:* Non-forcible sexual intercourse with a person who is under the statutory age of consent.<sup>4</sup>

**D. Dating Violence, defined as:** violence, on the basis of sex, committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

- The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

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<sup>3</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

<sup>4</sup> The age of consent in South Carolina is sixteen.

**E. Domestic Violence, defined as:** violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, *or* by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, *or* by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of South Carolina, *or* 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 South Carolina.

\*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

**F. Stalking, defined as:** engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a reasonable person to (1) fear for the person’s safety or the safety of others or (2) suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two 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.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Wofford College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this Policy.

**G. Definitions applicable under Section 3.03:** Force, Coercion, Consent, and Incapacitation. As used in the offenses above, the following definitions and understandings apply:<sup>5</sup>

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<sup>5</sup> South Carolina does not specifically define “consent.” The following information applies to criminal prosecutions for sex offenses in the state but may differ from the definition used on campus to address policy violations: *A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven: (a) The actor uses aggravated force to accomplish sexual battery; (b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act; or (c) The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance. S.C. Code Ann. § 16-3-652.*

*A person is guilty of criminal sexual conduct in the second degree if the actor uses aggravated coercion to accomplish sexual battery. S.C. Code Ann. § 16-3-653(1).*

*A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven: (a) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances; or (b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery. S.C. Code Ann. § 16-3-654.*

- i. *Force*: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

By definition, sexual activity that is forced is non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

- ii. *Coercion*: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

- iii. *Consent* is knowing, voluntary, and clear permission by word or action to engage in sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether this Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM (Bondage, discipline/dominance, submission/sadism, and masochism.) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Wofford’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

- iv. *Incapacitation*: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

### **Section 3.04 Other Civil Rights Offenses**

The following offenses are forms of discrimination when the act is based upon the Complainant’s actual or perceived membership in a protected class. See Section 2.01 for a list of protected classes under this Policy.

- A. Sexual Exploitation**, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this Policy.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent), including the

- making or posting of revenge pornography
  - Prostituting another person
  - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
  - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
  - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
  - Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
  - Knowingly soliciting a minor for sexual activity
  - Engaging in sex trafficking
  - Creation, possession, or dissemination of child pornography
- B.** Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
- C.** Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- D.** Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- E.** Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Wofford community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Code of Student Rights and Responsibilities, Article IV(H));
- F.** Bullying, defined as: Repeated and/or severe aggressive behavior that is likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally.

Violation of any other College policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

### **Section 3.05 Retaliation**

Protected activity under this Policy includes reporting an incident that may implicate this Policy, participating in the resolution processes, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Wofford College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for the College or any member of Wofford's community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or 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 and procedure.

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 complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a resolution proceeding under this Policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

#### **ARTICLE IV. HANDLING OF SENSITIVE INFORMATION**

The College encourages anyone who has experienced discrimination to talk to someone about what happened, both so that they can get the support they need and so that the College can respond appropriately. The College wants individuals to be aware of the various reporting and confidential options available to them so that they can make informed choices about where to turn should they be subjected to discrimination.

##### **Section 4.01 Sharing of information (applicable to all reports)**

The College will make every feasible effort to preserve the privacy<sup>6</sup> of reports. The College will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation (Complainant); any individual who has been reported to be the perpetrator of harassment, discrimination, or retaliation (Respondent); or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), as required by law, or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or resolution proceeding arising under these policies and procedures.

To preserve the parties' rights and privacy, only a small group of officials who need to know will typically be told about the report or formal complaint. Information will be shared only as appropriate and necessary in order to address and resolve the allegation(s) at issue, prevent the recurrence of similar conduct, and address the effects of the conduct. The College reserves the right to designate which College officials have a legitimate educational interest in being

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<sup>6</sup> For the purpose of this Policy, privacy and confidentiality have distinct meanings. As indicated in this section, *privacy* means that information related to a report or formal complaint will be shared with a limited number of College employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. *Confidentiality*, as explained in Section 4.03, means information will not be shared by a Confidential Resources without permission, except when as required by law.



informed about incidents that fall within this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

The College may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk to their student, but will usually consult with the student first before doing so.

In addition, the College may be required by state law to inform the South Carolina State Law Enforcement Division of the occurrence of the reported incident(s) of Sexual Assault, and College personnel may share reports with local law enforcement if warranted by the nature of the allegations at issue (e.g. incidents involving minors).

#### **Section 4.02 Mandatory Reporters and Reporting Requirements**

All College employees, with the exception of those designated as Confidential Resources, are considered Mandatory Reporters. A disclosure of information related to Sexual Harassment (Sexual Harassment includes dating violence, domestic violence, stalking, sexual assault, and sexual harassment; *see* Section 3.03) to a Mandatory Reporter constitutes a report to the College and obligates the College to provide appropriate supportive measures and information about filing a formal complaint.

A Mandatory Reporter must share all relevant details about reported Sexual Harassment shared by the Complainant or a third-party to the Title IX Coordinator or an Institutional Equity Case Coordinator as soon as is practicable but within 24 hours of receiving the report – including the names of the Complainant and the alleged perpetrator(s), any witnesses and any other relevant facts, including the date, time, and specific location of the alleged conduct. In addition, Mandatory Reporters must also promptly share all details of Sexual Harassment that they observe or have knowledge of, even if not reported to them by a Complainant or third-party. Mandatory Reporter duties apply to reports or information related to employees, students, and guests.

Mandatory Reporters are not required, but are strongly encouraged, to report other conduct that could violate this Policy.

#### **Section 4.03 Confidential Resources**

Individuals who would like to speak with someone without reporting to the College may reach out to a Confidential Resource. At Wofford, the following are considered Confidential Resources:

- Counselors in the Wellness Center (for students) (864-597-4370 or ext. 4371)
- Medical professionals in the Wellness Center (864-597-4370 or ext. 4371)
- Chaplain (864-597-4050 or ext. 4051)
- Athletic Trainers (864-597-4114)
- Ombudsperson (for faculty and staff) (864-597-4659 or ext. 4659)

Individuals in the above positions will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or a court order.

Confidential Resources are not Mandatory Reporters and therefore are not required to (and will not, absent direction from the disclosing individual) submit reports to the Title IX Coordinator. For purposes of clarity, all other College employees who are not Confidential Resources are Mandatory Reporters required to report Sexual Harassment. Communications made to Mandatory Reporters are not entitled to the same confidentiality protections as those made to Confidential Resources.

Note that people who serve more than one role at the College (e.g. chaplain *and* faculty member) will be a Confidential Resource when serving in the role designated as confidential (e.g. chaplain) but will be a Mandatory Reporter when serving in a role designated as a Mandatory Reporter role (e.g. faculty member). Confidential Resources may report non-identifying statistical information to the College.

Confidential Resources will assist both parties in receiving necessary support. A Complainant who first speaks with a Confidential Resource may later decide to file a formal complaint with the College or report to local law enforcement and thus have the report fully investigated.

Individuals may also seek assistance confidentially from resources off campus, including licensed professional counselors, rape crisis counselors, domestic violence resources, local or state assistance agencies, clergy, and attorneys.

#### **Section 4.04 Request by Complainant not to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a resolution process upon completion of an appropriate risk assessment.

The Title IX Coordinator may consult with the Behavioral Intervention Team or other appropriate administrators prior to making a decision. The Title IX Coordinator's decision should be based on results of a risk assessment that show a compelling risk to health and/or safety that requires the College to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The College may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the College's ability to pursue a resolution fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When the College proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant

under this Policy irrespective of their level of participation. Sometimes, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

Note that the College's ability to remedy and respond to a report may be limited if the Complainant does not want the College to proceed with an investigation and/or resolution process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College's obligation to protect its community.

In cases in which the Complainant requests no formal resolution and the circumstances allow the College to honor that request, the College will offer other options, including supportive measures and remedies to the Complainant and the community, but will not otherwise pursue formal resolution.

If the Complainant elects to take no action and the College can honor the request, the Complainant can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the College and to have the incidents investigated and properly resolved through these procedures.

## **ARTICLE V. HOW AND WHERE TO REPORT PROHIBITED CONDUCT**

For information about seeking medical assistance and emotional support as well as important contact information for local law enforcement agencies, hospitals, and other resources, see Exhibit C attached to this Policy.

Because conduct prohibited by this Policy may in some instances constitute both a violation of College policy and criminal activity, and because the College processes are not a substitute for instituting legal action, the College encourages individuals to report to College officials and to law enforcement authorities, where appropriate.

Individuals have the option not to report to campus officials or to law enforcement authorities. The College respects the individual's decision in regard to reporting; however, if the College receives a report, it may have to proceed subject to provisions outlined in Section 4.04 of this Policy and may be required to report to law enforcement (*see* Section 4.01 for additional information).

### **Section 5.01 Reporting to the College**

Reports of discrimination, harassment, and/or retaliation may be made using any of the following options:

- File a report with or give verbal or written notice to the Title IX Coordinator, an Institutional Equity Case Coordinator, or an Official with Authority. Reports can be made at any time via the phone numbers, email addresses, or mailing addresses listed in Section 1.02 or in person during normal business hours.
- Report online using the Discrimination and Harassment Reporting Form, which can be found on myWofford and at [www.wofford.edu/titleix](http://www.wofford.edu/titleix). The online reporting form can be used to submit reports anonymously. Please note that anonymous reports may be difficult

for the College to follow up or take action on when corroborating information is limited. Anonymous reports may be used for Clery Act data collection purposes.

A formal complaint is a document that is filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a respondent and requesting that the College investigate the allegation(s). A formal complaint may be filed with the Title IX Coordinator in person, by mail or email, or by using the contact information in Section 1.02. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by email or through an online reporting form provided for this purpose by the College) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint. If an attempt is made to file a formal complaint but this standard is not met, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

A Complainant may submit a report without filing a formal complaint for the purposes of documenting the reported conduct with the College, to request supportive measures (*see* Section 7.03), and/or to learn about options for resolution under this Policy.

If the Title IX Coordinator is the Respondent or is otherwise at issue in a report of Prohibited Conduct, a report may be made to an Institutional Equity Case Coordinator, Official with Authority, or the College’s President.

No member of the College community may discourage an individual from reporting conduct prohibited by this Policy. No employee is authorized to investigate or resolve reports of conduct prohibited by this Policy without the approval, involvement, and direction of the Title IX Coordinator or an assigned Institutional Equity Case Coordinator.

### **Section 5.02 Reporting to Campus Safety**

Campus Safety staff members are Mandatory Reporters. When Campus Safety receives a report related to conduct prohibited under this Policy, an officer may conduct an investigation to determine whether there is an ongoing or imminent threat to the campus community or for law enforcement purposes. Any information that Campus Safety receives related to a report of Sexual Harassment will be shared with the Title IX Coordinator. Information provided to the Title IX Coordinator by Campus Safety will be used at the discretion of the Title IX Coordinator, assigned Institutional Equity Case Coordinator, and other College administrators to assist in the resolution of a complaint under this Policy.

### **Section 5.03 Reporting to Local Law Enforcement**

**Individuals may file a complaint directly with local law enforcement agencies by dialing 911.** Individuals may contact any of the following for assistance in filing a complaint with local law enforcement:

- Wofford College Campus Safety, 24 hours a day, seven days a week (available by phone at 864-597-4911 and located in the Mungo Student Center).
- The College’s Title IX Coordinator, Matthew Hammett, (available by phone from 8:30 a.m. to 5 p.m. Monday through Friday at 864-597-4048 or by email at [hammettmk@wofford.edu](mailto:hammettmk@wofford.edu) and located in the Snyder House).

Individuals may file complaints or discuss matters with law enforcement authorities without requesting an investigation under this Policy. Individuals who make a criminal complaint also may choose to pursue a College Complaint simultaneously or at a different time.

#### **Section 5.04 Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

#### **Section 5.05 Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- VAWA<sup>7</sup>-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to Campus Safety regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

### **ARTICLE VI. POLICIES APPLICABLE TO ALL COMPLAINTS OF PROHIBITED CONDUCT**

#### **Section 6.01 Resolution Oversight**

The Title IX Coordinator will be responsible for direct oversight and the prompt, fair, thorough and impartial resolution of formal complaints filed with the College. The Title IX Coordinator may designate an Institutional Equity Case Coordinator or other trained employee to oversee resolution processes. In cases where an Institutional Equity Case Coordinator has been assigned, they will fulfill all responsibilities designated to the Title IX Coordinator throughout the resolution processes unless otherwise indicated.

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<sup>7</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

## **Section 6.02 Impartiality and Conflicts**

Individuals involved in the investigation or resolution of complaints under this Policy may neither have nor demonstrate a conflict of interest or bias for a party generally or for a specific Complainant or Respondent. To raise a concern involving bias or a conflict of interest of an individual designated to investigate or resolve a complaint under this Policy, individuals should contact the Title IX Coordinator or an Institutional Equity Case Coordinator, who will determine if the concern is reasonable and supportable. If so, another Resolution Process Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. To raise any concern involving bias or conflicts of interest by the Title IX Coordinator, contact the College's president at [president@wofford.edu](mailto:president@wofford.edu).

The formal resolution process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the preponderance of the evidence standard.<sup>8</sup>

If any employee designated by this Policy to participate in the investigation or resolution of a complaint is the Respondent, then the Title IX Coordinator will appoint another College administrator or a third party to perform such person's duties under this Policy. (If the Title IX Coordinator is the Respondent, then the president of the College will appoint another College employee or a third party to perform their duties under this Policy.)

## **Section 6.03 Timing**

The College will make every reasonable effort to ensure that the resolution of a complaint occurs in as timely and efficient a manner as possible. The timelines set forth in this Policy are intended as guidelines and may be altered for good cause. The College will strive to complete the resolution of a complaint (not including an appeal, if applicable) within 90 calendar days of the receipt of the complaint, absent extenuating circumstances. If circumstances, such as complexity of the case, non-availability of parties or witnesses, College breaks, or other circumstances require the resolution to extend past 90 calendar days, the College will notify the parties of that fact.

Any party may request an extension of any deadline by providing the Title IX Coordinator with a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request. The Title IX Coordinator may modify any deadlines contained in this Policy as necessary and for good cause; in such case, the Title IX Coordinator will provide the Complainant and the Respondent with written notice of the modification and the reason, therefore.

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<sup>8</sup> Preponderance of the evidence means that it is more likely than not that a violation occurred.

## **Section 6.04 Documentation and Recording**

The College will retain documentation (including, but not limited to, any written complaints, notifications, the investigative report, written findings of fact, petitions for appeal, notifications of decisions and any written communication to or from the parties) for at least seven (7) years.

Documentation pertaining to expulsions or degree revocations will be retained indefinitely or in accordance with College policy.

The College may record any interviews, meetings, or proceedings related to this Policy. Any recordings will be the property of the College, and copies of any recordings will not be available except as required or authorized by law. Any technological problems that result in no recording or an inaudible one will not affect the validity of the outcome of a case. Parties, witnesses, and Advisors are not permitted to record any of the proceedings.

## **Section 6.05 Privacy and Disclosure**

In order to comply with FERPA, Title IX, and other applicable laws, and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the resolution processes are not open to the general public. Accordingly, documents prepared in anticipation of the facilitated and/or the formal resolution processes (including the Complaint, the investigative report, and notices and communications to or from the Complainant or the Respondent); documents, statements, or other information introduced in interviews and meetings; and outcome letters may not be disclosed outside of those processes except as may be required or authorized by law. The College reserves the right to notify parent(s) or guardian(s) of a student Respondent of the outcome of any investigation involving that Respondent, redacting names of any other students who do not consent to the disclosure of their information.

College policy does not prohibit the further disclosure of outcome letters by either the Complainant or the Respondent. However, the College strongly encourages parties to maintain privacy in proceedings pursuant to this Policy.

## **Section 6.06 Violations Involving Groups of Individuals**

Members of a student group, an organization, a College department or a team, or individuals collusively acting in concert in violation of this Policy may be charged as a group and/or as individuals, and an investigation may proceed against the group as joint respondents or against one or more involved individuals as appropriate given the available information and the circumstances.

A student group, an organization, or a team's officers and members may be held collectively and individually responsible when violations of this Policy by the organization or its members include any of the following circumstances:

- Occurred at organization-sponsored events
- Received the consent or encouragement of the organization or of the organization's leaders or officers
- Were known or reasonably should have been known to the membership or its officers

In any such action, individual determinations as to responsibility will be made and sanctions may be assigned collectively and/or individually in proportion to the involvement of each individual. Moreover, consistent with the provisions of Section 7.03, the College may impose interim measures against a group including, but not limited to, social suspension and restriction of access to College facilities.

### **Section 6.07 Consolidation of Investigation**

The Title IX Coordinator may consolidate multiple reports against a single Respondent or group of Respondents into one investigation if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident(s).

### **Section 6.08 Termination of Processes**

The process followed considers the preferences of the parties, but is ultimately determined by the Title IX Coordinator or their designee. If during the initial inquiry or at any point during the investigation or resolution processes the Title IX Coordinator or their designee determines that reasonable cause does not support the conclusion that the Policy has been violated, the process will be terminated and the parties notified. Appeals apply only as noted within the resolution processes.

### **Section 6.09 Withdrawal or Resignation with Pending Allegations/Charges**

- A. Students.** If a student Respondent has an allegation pending for violation of this Policy, the College may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide not to participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the College, the resolution process ends, as the College no longer has disciplinary jurisdiction over the withdrawn student. The College reserves the right to resume resolution procedures should the Respondent decide to return to the College. The student may also be barred from College property and/or events.

When a student Respondent withdraws, the College will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

If the student Respondent only withdraws for a specified period of time (e.g., one semester), the resolution process may, at the discretion of the Title IX Coordinator, continue remotely and that student is not permitted to return to College unless and until all sanctions, if applicable, have been satisfied.

- B. Employees.** Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the College no longer has disciplinary jurisdiction over the resigned employee.

However, the College will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.



The employee who resigns with unresolved allegations pending is not eligible for rehire with the College, and the records retained by the Title IX Coordinator will reflect that status.

### **Section 6.10 Advisors**

The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor, as long as the Advisor is eligible and available.<sup>9</sup>

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored throughout the resolution process.

- A. Who Can Serve as an Advisor.** The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the College community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from the College, the Advisor will be trained by the College and be familiar with the College's resolution process.

If the parties choose an Advisor from outside the pool of those identified by the College, the Advisor may not have been trained by the College and may not be familiar with College's policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing, if applicable.

- B. Advisors in Hearings/Wofford-Appointed Advisor.** Under U.S. Department of Education regulations applicable to Title IX, cross-examination is no longer required during the hearing. If cross-examination takes place, it must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any cross-examination.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct cross-examination, the College will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker/Panel during the hearing.

- C. Advisor's Role.** The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews.

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<sup>9</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The College cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the College is not obligated to provide an attorney.

- D. Advisor Violations of College Policy.** All Advisors are subject to the same policies and procedures, whether they are attorneys or not. Advisors are expected to advise the parties without disrupting proceedings. Advisors should not address College officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker/Panel except during a hearing proceeding, during cross-examination, if applicable.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this Policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

- E. Sharing Information with the Advisor.** The College expects that the parties may wish to have the College share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

The College also provides a consent form that authorizes the College to share such information directly with an Advisor. The parties must complete and submit this form to the Title IX Coordinator before College is able to share records with an Advisor. The College will not honor requests that all communication be made through a parties Advisor.

- F. Privacy of Records Shared with Advisor.** Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations.
- G. Expectations of an Advisor.** The College generally expects an Advisor to adjust their schedule to allow them to attend meetings when planned but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The College may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

**H. Expectations of the Parties with Respect to Advisors.** A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Title IX Coordinator of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their Advisor for the hearing two (2) business days before the hearing, if applicable.

#### **I. Resources for Securing an Advisor**

*Respondents* may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

*Complainants* may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>

### **Section 6.11 Resolution Process Pool**

The resolution processes rely on a pool of College employees trained to carry out the procedures listed below. The pool includes individuals who may serve as Investigators, Advisors, or Decision-makers.

In addition to College employees, the Title IX Coordinator may, in their sole discretion, appoint external individuals to serve in the role of Investigator, Advisor, Hearing Decision-maker, or Appeal Decision-maker.

## **ARTICLE VII. PROCESSES APPLICABLE TO ALL COMPLAINTS OF PROHIBITED CONDUCT**

### **Section 7.01 Resolution Overview**

Wofford College will act on any reports or formal complaints alleging violations of this Policy that are received by the Title IX Coordinator<sup>10</sup> or any other Official with Authority by applying these procedures.

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<sup>10</sup> Anywhere this procedure indicates "Title IX Coordinator," the College may substitute a trained designee, like an Institutional Equity Case Coordinator, College administrator, or external individual.

The resolution procedures apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, administrators, or faculty members. A set of technical “Mandatory Dismissal” requirements within the Title IX regulations may apply as described below, but when a mandatory dismissal under the Title IX allegations is required, any remaining allegations will proceed using PROCESS B, clarifying which policies above are applicable. If a complaint is dismissed under “Discretionary Dismissal,” as described below, the complaint will not proceed to resolution, although supportive measures may be implemented; the complaint will be administratively closed but may be reopened at the discretion of the Title IX Coordinator.

**A. Mandatory Dismissal.** The College must dismiss a formal complaint or any allegations therein if, at any time during the formal resolution process it is determined that:

1. The conduct alleged in the formal complaint would not constitute Sexual Harassment (see Section 3.03) as defined in this Policy, even if proved; and/or
2. The conduct did not occur against a person in the United States; and/or
3. The conduct did not occur in an educational program or activity controlled by the College (including buildings or property controlled by recognized student organizations), and/or the College does not have control of the Respondent; 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.

**B. Discretionary Dismissal.** The College may dismiss a formal complaint or any allegations therein if, at any time during the formal resolution process:

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 Complainant does not withdraw the formal complaint and the allegations therein, but ceases to participate in the formal resolution process;
3. The Respondent is no longer enrolled in or employed by the College; or
4. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

## **Section 7.02 Title IX Coordinator Receipt of Report**

When the Title IX Coordinator is informed of a report or they receive a formal complaint, they or their designee will promptly conduct an initial assessment to determine next steps.

The Title IX Coordinator’s initial assessment could include, but is not limited to, the following:

**A. When a formal complaint has not been made.** The Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint and will assist them in doing so, if desired. If they do not wish to do so, the Title IX Coordinator determines whether to initiate a formal complaint because a risk assessment indicates a compelling threat to health and/or safety (*see* Section 4.04).

**B. If a formal complaint is received.** The Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.

- C. If the Complainant has not decided how to proceed.** The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, a facilitated resolution, or a formal resolution.
- If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. If no formal complaint is filed, the Complainant can elect to initiate one later, if desired.
  - If a facilitated resolution or formal resolution is preferred, the Title IX Coordinator will review possible steps forward and oversee any resolution processes.

### **Section 7.03 Supportive Measures and Interim Responsive Measures**

Following receipt of a report and at any point during or after the resolution of a formal complaint, the Title IX Coordinator will determine which, if any, of the following measures and/or actions should be taken:

- A. Supportive Measures.** When warranted to ensure the safety and well-being of the parties, the Title IX Coordinator, in consultation with appropriate administrators, may implement one or more supportive measures, if appropriate and/or reasonably available, including, but not limited to, the following:
- Issuing no-contact orders to prevent any contact between or among the Complainant, the Respondent, witnesses, and/or third parties
  - Providing an individual to escort a Complainant and/or Respondent between on campus classes, work, and/or activities
  - Altering campus housing assignments
  - Safety planning
  - Arranging to dissolve a campus housing contract and offering a pro-rated refund
  - Altering work arrangements or schedules
  - Class schedule modifications, incompletes, or withdrawals
  - Rescheduling class work, assignments, and examinations
  - Referral to the Employee Assistance Program
  - Academic support services
  - Referral for counseling and/or medical services
  - Visa and immigration assistance
  - Referral to community-based service providers
  - Student financial aid counseling
  - Education to the community or community subgroup(s)
  - Issuing Trespass Notices
  - Timely Warnings
  - Any other actions deemed appropriate by the Title IX Coordinator

A Complainant need not file a formal complaint in order for supportive measures to be implemented for the Complainant and/or Respondent. The College will maintain the privacy of supportive measures, provided the privacy does not impair the College's ability to provide supportive measures. The College will act to ensure as minimal an academic impact on the parties as possible. The College will implement supportive measures in a way that does not unreasonably burden the other party.

**No Contact Order.** College administrators are empowered to issue a No Contact Order (NCO), prohibiting contact between parties when there exists reasonable concern that harm may result from such contact. Contact includes direct and indirect contact, through a third-party, and/or through technology or social media. It may be imposed for a specified period of time, or permanently. NCOs will not be issued for general interpersonal conflicts that do not raise concerns for the individual health and safety of at least one of the parties.

NCOs may be issued by the following administrators or their designees:

- + Dean of Students
- + Director for Civil Rights, Title IX Compliance and Student Risk Assessment
- + Assistant Dean of Students for Residence Life & Community Standards
- + For emergency situations: the Director of Campus Safety or the on-call CLSD administrator may issue temporary NCOs, which shall be confirmed modified, or rescinded by one of the designated administrators once all relevant information is reviewed.

When an NCO is issued, both parties will receive written notice of the order and a summary of prohibited conduct. Violation of an NCO may result in immediate sanctions, which may include suspension and/or other summary actions, and referral to the student conduct system.

Each NCO will remain in effect until the graduation or withdrawal of at least one of the parties, unless the NCO expressly provides otherwise or is modified or rescinded by the College. A student pursuing the modification or rescission of an NCO must make a request of the issuing administrator. NCOs may be modified or rescinded so long as proper notice is provided to both parties.

- B. Interim Responsive Measures.** The College can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis as determined by appropriate administrators.
- i. Student Respondents.** When the Respondent is a student or a student organization, an individualized safety and risk analysis will be used to determine whether an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with other relevant administrators or in consultation with the Behavioral Intervention Team. The College will implement the least restrictive emergency actions possible in light of the circumstances.
  - ii. Employee Respondents.** When the Respondent is an employee, the Title IX Coordinator in conjunction with other relevant administrators will review all relevant information available and when the employee Respondent's alleged actions or behaviors affect the safety, health, or general welfare of the Complainant, students, other employees, and/or the College community, the Title IX Coordinator will (1) take such steps as are reasonable, appropriate, and necessary to restrict the Respondent's access to college facilities, and/or (2) temporarily adjust the job duties of or place on administrative leave such Respondent.

In all cases in which an emergency removal is imposed, the student, employee, or two representatives from a student organization will be given notice of the action and the option to request to meet with the Title IX Coordinator or their designee prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within three business days of the notice, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the administrator determines it is equitable to do so. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice during the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has discretion under this Policy to implement or stay an emergency removal and to determine whether changes should be made to the conditions and duration.

Actions could include, but are not limited to: removing a student from a residence hall or all College housing, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, implementing a temporary suspension of a student or employee, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, student programs or activities, or intercollegiate/intramural athletics.

- C. **Compliance with supportive and responsive measures.** Individuals subject to supportive or responsive measures are expected to adhere to the measures put in place by College officials until such measures are revoked or revised. Any allegations that individuals are not complying with the measures put in place will be reviewed by the Title IX Coordinator. The Title IX Coordinator may interview the Complainant, Respondent, or any other individuals with information about the alleged noncompliance, or the Title IX Coordinator may request that the appointed Investigator(s) or other trained individuals conduct interviews to determine what, if any, additional steps need to be taken. Additional steps may include, but are not limited to, additional measures, adjudication under this Policy, or a referral to the director of human resources, the provost, or the vice president of campus life and student development for adjudication under other campus policies. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

#### **Section 7.04 The Title IX Coordinator's Initial Determination**

The Title IX Coordinator will review the information available to determine whether the complaint will move forward for resolution under this Policy. To make their determination, the Title IX Coordinator may perform an initial inquiry, which may include, but is not limited to, preliminary conversations with witnesses and information gathering.

The complaint will move forward to either formal resolution or facilitated resolution pursuant to this Policy unless it is clear on its face and/or based on the Title IX Coordinator's initial meetings with the parties that no reasonable grounds exist for believing that the conduct at issue is a violation of this Policy.

- A. If a facilitated resolution has been requested, the Title IX Coordinator will assess whether the complaint is suitable for facilitated resolution and may seek to determine if the Respondent is also willing to engage in a facilitated resolution.
- B. If a formal resolution is requested, the Title IX Coordinator will determine if the misconduct alleged falls within the scope of Title IX.
  - If it does, the Title IX Coordinator will initiate the formal resolution process, directing the investigation to address: an incident, and/or a pattern of alleged misconduct, and/or a culture/climate issue, based on the nature of the complaint.
  - If it does not, the Title IX Coordinator will determine that Title IX does not apply (and will "dismiss" that aspect of the complaint), assess which policies may apply, and direct the complaint for resolution through PROCESS B, if still applicable. Please note that dismissing a complaint under Title IX is procedural and does not limit the College's authority to address a complaint with an appropriate process and remedies (*see* Section 7.01).

If the Title IX Coordinator determines that resolution of the complaint is not warranted, they will close the complaint, document the closure, and promptly notify the Complainant and the Respondent of the closure and the rationale for the closure. This dismissal may be appealed by any party within three (3) business days of the closure.

Following receipt of the appeal, the Chief Equity Officer or their designee will determine whether the complaint warrants further investigation and whether any additional or different remedial action is necessary. The Chief Equity Officer will notify the Complainant and the Respondent concurrently of their decision within five (5) business days of receipt of the appeal. The decision of the Chief Equity Officer is final.

### **Section 7.06 Respondent's Acknowledgement of Responsibility**

At any time prior to receiving the Outcome Letter during the formal resolution process or the conclusion of the facilitated resolution process, the Respondent may elect to acknowledge their actions and take responsibility for the reported Prohibited Conduct. In such a situation, the complaint will proceed pursuant to Section 8.04(B) for the determination of sanctions. Sanction determinations are not subject to appeal, and no further options for appeal apply.

## **ARTICLE VIII. FORMAL RESOLUTION OF TITLE IX SEXUAL HARASSMENT COMPLAINTS**

### **Section 8.01 Investigation**

- A. **Notice of Allegations and Investigation.** When a formal complaint moves forward to resolution under Article VIII, the parties will receive a Notice of Allegations and Investigation that will include the following: the name of both parties, if known; a meaningful summary of all of the allegations; the precise misconduct being alleged; the date and location of the alleged incident(s), if known; the specific policies implicated; a description of the applicable procedures; a statement of the potential sanctions/responsive actions that could result; a



statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination; a statement that determinations of responsibility are made at the conclusion of the process and that parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period; a statement about the College's policy on retaliation; information about the privacy of the process; information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor; a statement informing the parties that the College's policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process; detail on how the party may request disability accommodations during the interview process; a link to or attachment with information required by VAWA, if applicable; the name(s) of the Investigator(s), if they have been identified, and a process to identify, in advance of the interview process, to the assigned Institutional Equity Case Coordinator any conflict of interest that the Investigator(s) may have; and an instruction to preserve any evidence directly related to the allegations.

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

Notice may be delivered in person, via mail, or via email to the parties' College-issued email address. Once sent, notice will be presumptively delivered.

- B. Appointment of Investigators.** The Title IX Coordinator will promptly appoint one or more Investigator(s) from the pool (Resolution Process Pool, as defined in Exhibit A) or by utilizing an external individual(s). Within three (3) business days of receiving the names of the Investigator(s), the parties may identify to the Title IX Coordinator in writing alleged conflicts of interest posed by assigning such Investigator(s) to the matter. The Title IX Coordinator carefully will consider such statements and will assign different individual(s) as Investigator(s) if it is determined that a material conflict of interest exists.
- C. Overview of the investigation.** All investigations are thorough, reliable, impartial, prompt, and fair. Throughout the investigation, parties will have an equal opportunity to submit evidence, to identify witnesses and provide an explanation of their relevancy to the investigation, and to submit questions they believe should be directed by the Investigator(s) to any witness or to each other.

The Investigator(s) promptly will begin the investigation by identifying issues, developing a strategic investigation plan with an intended timeline, and creating a witness list (to be provided to both parties, if desired) and evidence list. Steps the Investigators will take may include the following:

- Conducting interviews with the Complainant, the Respondent, and witnesses.
- Visiting, inspecting, and taking or reviewing photographs at relevant sites where applicable.
- Collecting and preserving relevant evidence (in cases of corresponding criminal complaints, this step may be coordinated with law enforcement agencies) where applicable. Throughout the investigation, the Investigators will remain neutral.
- Providing parties and witnesses an opportunity to review and verify the accuracy of interview summaries.

- Writing a comprehensive investigation report, which will include summaries of the investigation, party and witness interviews, and relevant evidence. The investigators gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations.
- D. Evidentiary matters.** Unless the Title IX Coordinator determines it is appropriate, the investigation and the finding of responsibility does not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern, (2) the sexual history of the parties, though there may be a limited exception made in regard to the sexual history between the parties or when evidence regarding the Complainant’s sexual history is offered to prove that someone other than the responding party engaged in the reported misconduct or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent, or (3) the character of the parties.
- E. Draft investigative report.** At the conclusion of the investigation, the Investigator(s) will submit the investigative report to the Title IX Coordinator. The Title IX Coordinator will make the draft investigative report concurrently available to both parties and will provide ten (10) calendar days for the parties to review and respond to the draft investigative report (“review and response period”). In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the Investigator(s) during the designated review and response period will not be considered in the determination of responsibility for a violation of this Policy and will not be considered for appeal.

During the review and response period, the Complainant and Respondent may meet with the Investigator(s), submit additional comments and information to the Investigator(s), identify any additional witnesses or evidence for the Investigator(s) to pursue, and submit any further questions that they believe should be directed by the Investigator(s) to the other party or to any witness.

The Investigator(s) will review any responses submitted during the review and response period and determine any additional steps that should to be taken before finalizing the report. The Investigators may respond in writing in the investigation report to the parties’ submitted responses and/or share the responses between the parties for additional responses. The final investigative report will be submitted to the assigned Institutional Equity Case Coordinator.

Due to the sensitive nature of the information in this report, neither the parties nor their Advisors may copy, remove, photograph, print, image, record, or in any other manner duplicate or remove the information provided. The Complainant and Respondent may not make copies of the draft investigative report. All parties to whom the draft investigative report is distributed pursuant to this Policy must maintain it in confidence (even after the resolution of the complaint); the draft investigative report may only be disclosed as is contemplated by this Policy.

- F. Evaluation of the final investigative report.** The Title IX Coordinator will evaluate the final investigative report and will direct that the complaint proceed to a hearing for a finding of “responsible” or “not responsible” unless it is clear from the final investigative report that no reasonable grounds exist for believing that the conduct at issue constitutes a violation of this Policy.

The Title IX Coordinator will specify in writing to the parties which allegations will move forward to a hearing under this Policy. Any allegations that move forward to a hearing will be referred to as “charges.”

The Notice of Charges will include the following information:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker/Panel member on the basis of demonstrated bias. This must be raised with the assigned Institutional Equity Case Coordinator within three (3) business days of receiving the notice.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party’s or witness’s testimony and any statements given prior to the hearing will not be considered by the Decision-maker/Panel (unless the allegations are not related to Sexual Harassment). For compelling reasons, the Chair or assigned Institutional Equity Case Coordinator may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the assigned Institutional Equity Case Coordinator if they do not have an Advisor, and the College will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker/Panel about the matter, unless they have been provided already.
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker/Panel will review during any sanction determination.
- An invitation to contact the Title IX Coordinator or assigned Institutional Equity Case Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- A reminder that parties and Advisors cannot bring mobile phones or recording devices into the hearing.

If the Title IX Coordinator finds that it is clear from the final investigative report that no reasonable grounds exist to believe that the conduct at issue is a violation of this Policy, they will close the complaint, document the closure, and promptly notify the Complainant and the Respondent of the closure and the rationale for the closure.

The parties may appeal the Title IX Coordinator’s decision to close the complaint in writing to the Chief Equity Officer or their designee and provide a copy of the appeal to the assigned Institutional Equity Case Coordinator within five (5) business days of receipt of the notice of closure. The assigned Institutional Equity Case Coordinator will promptly inform the other party of the appeal

If a hearing occurs near or after the end of an academic term, the College may place a hold on a student Respondent's account until the matter, including appeal, is fully resolved.

### **Section 8.02 Pre-Hearing Preparation.**

- A. Hearing Decision-maker/Panel.** The College will designate a single Decision-maker or a three-member Panel from the pool (Resolution Process Pool, as defined in Section 6.11) or by utilizing an external individual(s). When a single Decision-maker is appointed, that individual will serve in the capacity as the "Chair." When a three-member Hearing Panel is appointed, one Hearing Panel member will be appointed Chair. Decision-makers/Panel members will not have had any prior involvement with the investigation. The assigned Institutional Equity Case Coordinator may include an alternate to sit through the resolution process in the event that a substitute is needed for any reason. An additional individual may serve as an administrative facilitator of the hearing, if their previous role in the process does not create a conflict of interest. The hearing will convene at a time designated by the Title IX Coordinator in consultation with the Chair.

Within three (3) business days of receiving the names of the Decision-maker/Panel members, the parties may identify to the Title IX Coordinator in writing alleged conflicts of interest posed by assigning such individual(s) to the matter. The Title IX Coordinator carefully will consider such statements and will assign different individual(s) as the Decision-maker/Panel members if it is determined that their bias or conflict of interest precludes an impartial hearing. Failure to submit a timely and proper objection will constitute a waiver of any right of objection to the Decision-maker/Panel. Parties will be notified in writing of any changes prior to the hearing.

Decision-maker/Panel members who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors prior to the hearing.

- B. Final investigative report.** The Title IX Coordinator will send the final investigative report to both parties a minimum of ten (10) calendar days prior to the scheduled hearing. If all parties and the Decision-maker/Panel agree, the timeline may be expedited.

Parties and their Advisors may continue to review and comment on the final investigative report, including available evidence, during the ten (10) calendar days leading up to the hearing. Additional review and comment should be submitted to the Title IX Coordinator who will ensure that it is shared with the Chair and the other party.

Due to the sensitive nature of the information in this report, neither the parties nor their Advisors may copy, remove, photograph, print, image, record or in any other manner duplicate or remove the information provided. The Complainant and Respondent may not make copies of the final investigative report. All parties to whom the final investigative report is distributed pursuant to this Policy must maintain it in confidence (even after the resolution of the complaint); the final investigative report may only be disclosed as is contemplated by this Policy.

- C. Pre-Hearing Meetings.** The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing so that the Chair can rule on their relevance ahead of the hearing to avoid any improper evidentiary introduction in the hearing,

to provide recommendations for more appropriate phrasing, and to minimize any potential delays during the hearing. However, advance review does not preclude the Advisors from asking at the hearing for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting; documentation and rationale may be sent by the Chair to the parties and their Advisor(s) after the meeting if they wish to meet with the other party or consult with the other Hearing Panel members prior to making a decision.

If the Chair and parties are in full agreement, they may decide in advance that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigative report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those ruling between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel, the Title IX Coordinator and/or the assigned Institutional Equity Case Coordinator or ask them to attend pre-hearing meetings.

Pre-hearing meetings will not be recorded.

- D. Witnesses and Evidentiary Matters.** Any witness, including the parties, scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and the Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The Chair, only with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the report or during the hearing.

### **Section 8.03 Hearing**

- A. Hearing Procedures.** All individuals participating in the hearing are expected, unless an exception was provided by the Chair or the assigned Institutional Equity Case Coordinator beforehand, to be physically present for the hearing. The College will use technology to facilitate the participation of parties and witnesses, who will be located in separate rooms, while providing the speaking party the opportunity to be in the same room as the Decision-maker/Panel.

Participants at the hearing will include the Chair, any additional Hearing Panelists, a hearing facilitator (if appointed), the Investigator(s) who conducted the investigation, the parties (or two (2) organizational representatives when an organization is the Respondent, Advisors to the parties, any called witnesses, the Title IX Coordinator or assigned Institutional Equity Case Coordinator (if requested by the Chair), the College's legal counsel (if requested by the Chair), and anyone providing authorized accommodations or assistive services.

At the hearing, the Decision-maker/Panel has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though the related alleged conduct may not specifically fall within this Policy

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker/Panelists and the parties and will then be excused.

Hearings (but not deliberations) are recorded by the College for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker/Panel, the parties, their Advisors, and appropriate administrators of the College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

The Decision-maker/Panel may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

- B. Commencement of the Hearing.** The Chair will explain the procedures and introduce the participants. The Chair then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.
- C. Presentation of the Final Investigative Report.** The Investigator(s) will present a summary of the final investigative report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker/Panelists and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker/Panel should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

- D. Testimony and Questioning.** After the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker/Panelists and then by the parties through

their Advisors (“cross-examination”). Cross-examination is no longer required under U.S. Department of Education regulations.

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may explore arguments regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has the final say on all questions and determinations of relevance, subject to any appeal. The Chair may consult with legal counsel or other Hearing Panelists on any questions of admissibility. The Chair may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain arguments from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker/Panel member at the hearing, the Chair will consult with legal counsel and/or refer them to the assigned Institutional Equity Case Coordinator and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

## **Section 8.04 Outcome**

- A. Determinations and Sanctioning.** The Decision-maker/Panel will deliberate in a closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a Panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair but, if so, is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker/Panel will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker/Panel may, at their discretion, consider the statements when determining sanctioning recommendations, but impact statements are not binding. In making their recommendations, the Decision-maker/Panel will consider the factors outlined in Section 8.04(C).

The Chair will then prepare a written deliberation statement and deliver it to the assigned Institutional Equity Case Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and sanctioning recommendations.

The Chair’s report typically should not exceed three (3) to five (5) pages in length and must be submitted to the assigned Institutional Equity Case Coordinator within two (2) business days of the end of deliberations unless the assigned Institutional Equity Case Coordinator grants an extension. If an extension is granted, the assigned Institutional Equity Case Coordinator will notify the parties.

The assigned Institutional Equity Case Coordinator will share the Chair’s report and any other relevant information with the designated sanctioning administrator.

<b>If the Respondent is a...</b>	<b>The sanctioning administrator is:</b>
Student	An assistant dean of students or their designee
Faculty Member	The provost or their designee
Staff Member	The staff member’s supervisor or appropriate vice president or their designee

The sanctioning administrator will submit a statement with the final sanction(s) and rationale for the sanction(s) in writing to the Institutional Equity Case Coordinator.

- B. Notice of Outcome.** Using the Chair’s deliberation statement and, if applicable, the sanctioning administrator’s statement on sanctioning and rationale, the assigned Institutional Equity Case Coordinator will work with the Chair and administrator to prepare a Notice of Outcome. The assigned Institutional Equity Case Coordinator will then share the letter with the parties and their Advisors within five (5) business days of receiving the Chair’s report, when the finding is not responsible, or the administrator’s statement, when the finding is responsible.

The Notice of Outcome will be shared with the parties simultaneously. Notification 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 College records, or emailed to the parties’ College-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

- *In cases with findings related to Sexual Harassment*, the Notice of Outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held. The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the College is required to share such information under state or federal law; any sanctions issued which the College is required to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the College’s educational or employment program or activity, to the extent the College is required to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).
- *In cases with findings related to Discriminatory Harassment or Other Civil Rights Offenses*, the Notice of Outcome will include information listed above that the assigned Institutional



Equity Case Coordinator, in consultation with the Title IX Coordinator, determines is required by law and/or is relevant and necessary for appropriate resolution of the complaint.

In all cases, the Notice of Outcome will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

C. **Sanctions.** Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- 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
- Any other information deemed relevant by the appropriate administrator

The sanctions will be implemented as soon as is feasible, 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 usual sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any College policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling:* A mandate to meet with and engage in either College-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student 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 privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Wofford.
- *Expulsion:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend College-sponsored events.

- *Withholding Diploma:* The College may withhold a student’s diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree:* The College reserves the right to revoke a degree previously awarded from the College for fraud, misrepresentation, and/or other violation of College policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions:* Deactivation, loss of recognition, loss of some or all privileges (including College registration) for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

The appropriate sanctions for sexual assault will include, at a minimum, a period of suspension from the College.

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

- *Written Warning*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Alteration of Work Arrangements*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

Termination is the presumptive sanction when an employee is found responsible for violating this Policy.

### Section 8.05 Appeals

- A. Request for Appeal.** Any party may file a Request for Appeal, but it must be submitted in writing to the assigned Institutional Equity Case Coordinator within three (3) business days of the delivery of the Notice of Outcome.

<b>If the Respondent is a...</b>	<b>The Appeal Decision-maker is:</b>
Student	The vice president of campus life and student development or their designee
Faculty Member	A vice president, director of human resources, or designee
Staff Member	The director of human resources or their designee

The Request for Appeal will be forwarded to the Appeal Decision-maker, who will not have been involved in the process previously, for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

**B. Grounds for Appeal.** Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, assigned Institutional Equity Case Coordinator, Investigator(s), or Decision-maker/Panel had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

**C. Review of Request for Appeal.** If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Decision-maker, and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Decision-maker will notify the other party(ies) and their Advisors, the Title IX Coordinator and assigned Institutional Equity Case Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker/Panel.

The other party(ies) and their Advisors, the assigned Institutional Equity Case Coordinator and Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker/Panel will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Decision-maker and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker/Panel, as necessary, who will submit their responses in three (3) business days, which will be circulated for review and comment by all parties. Neither party may submit any new requests for appeal after this time period.

**D. Appeal Determination.** The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses, and the Appeal Decision-maker will render a decision in no more than five (5) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

The following considerations will be made when the Appeal Decision-maker reviews the appeal:

- Decisions on appeal are to be deferential to the original decision, making changes to the

finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Hearing Decision-maker/Panel merely because they disagree with the finding and/or sanction(s).
- The Appeal Decision-maker may consult with the Title IX Coordinator or assigned Institutional Equity Case Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Hearing Decision-maker/Panel for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision is changed on remand.
- In rare cases where a procedural error cannot be cured by the original Hearing Decision-maker/Panel (as in cases of bias), the appeal may order a new hearing with a new Hearing Decision-maker/Panel.
- The results of a remand to a Hearing Decision-maker/Panel cannot be appealed.
- In cases in which the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the College required to share according to state or federal law, and the rationale supporting the essential findings to the extent the College required to share under state or federal law.

Notification 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 institutional records, or emailed to the parties' College-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

- E. Sanctions Status During the Appeal.** Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures, as outlined in Section 7.03(B), will commence.

The College may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

## **Section 8.06 Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator and/or assigned Institutional Equity Case Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

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

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Provision of an escort between on campus classes, work, and/or activities
- Climate surveys
- Policy modification and/or training
- Implementation of long-term no-contact orders between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies owed by the College to the Respondent to ensure no effective denial of educational access.

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

## **Section 8.07 Failure to Comply with Sanctions, Remedies, and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker/Panel (including the Appeal Decision-maker).

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

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

## **ARTICLE IX. FORMAL RESOLUTION OF NON-TITLE IX SEXUAL HARASSMENT COMPLAINTS AND OTHER CIVIL RIGHTS OFFENSES**

### **Section 9.01 The Outcome**

- A. Composition of the Review Panel.** Findings regarding all charges of Prohibited Conduct and related misconduct will be determined by a three (3) person Review Panel consisting of the appointed Investigators and one (1) other trained decision-maker (when only one Investigator

previously was appointed to investigate the case, the Title IX Coordinator will appoint two trained decision-makers to the Review Panel) appointed by the Title IX Coordinator. Within three (3) business days of receiving the names of the Review Panel members, the parties may identify to the Title IX Coordinator in writing alleged conflicts of interest posed by assigning such individual(s) to the matter. The Title IX Coordinator carefully will consider such statements and will assign different individual(s) as the Review Panel members if it is determined that their bias or conflict of interest precludes an impartial hearing. Failure to submit a timely and proper objection will constitute a waiver of any right of objection to the Review Panel. Parties will be notified in writing of any changes prior to the hearing.

Review Panel members who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties.

**Section 9.02 Appeals.**

The Complainant or the Respondent may appeal the decision of the Review Panel and/or the sanction(s) imposed on the Respondent within three (3) calendar days from the date of the Outcome Letter (when the Respondent has been found not responsible) or the date of the Sanction Letter (when the Respondent has been found responsible for one or more charges). The decision of the Review Panel and the sanction imposed on the Respondent may, if desired, be appealed simultaneously.

**A. Grounds for appeal.**

- i. Appeal of findings.** The only permissible grounds for an appeal of the Review Panel’s finding of responsible or not responsible are (1) availability of germane new evidence not available at the time of the Review Panel’s decision that could significantly impact the outcome and/or (2) procedural errors that significantly impacted the outcome.

**B. Generally.** Appeals must be made in writing to the Assigned Institutional Equity Case Coordinator. The Assigned Title IX Deputy Coordinator will promptly inform the other party of the filing of the appeal and will forward the appeal and all relevant materials to the Appeals Officer.

<b>If the Respondent is a...</b>	<b>The Appeals Officer is:</b>
Student	The Vice President for Student Affairs or their designee
Faculty Member	The Provost or their designee
Staff Member	The Director of Human Resources or their designee

**C. Review of the appeal.** The Appeals Officer will review the appeal and all relevant materials to make one of the following determinations: (1) the appeal does not meet the permissible

grounds for appeal; (2) the decision of the Review Panel and/or the decision of the Title IX Coordinator and appropriate administrator should stand; (3) the decision of the Review Panel and/or the decision of the Title IX Coordinator and appropriate administrator should be overturned.

In the event that the Appeals Officer determines that the decision of the Review Panel and/or the Title IX Coordinator and appropriate administrator should be overturned, the Appeals Officer will specify, after consultation with the Assigned Title IX Deputy Coordinator and appropriate administrators, the appropriate steps to be taken to come to a final resolution of the complaint.

**D. Notification of determination.** Within ten (10) days of receipt of the appeal, the Appeals Officer will inform the Assigned Title IX Deputy Coordinator of their decision and rationale. The Assigned Title IX Deputy Coordinator promptly will notify the Complainant and the Respondent of the Appeals Officer's decision concurrently and in writing. There shall be no further appeals.

## **ARTICLE X. FACILITATED RESOLUTION**

### **Section 10.01 Facilitated Resolution, Generally.**

Facilitated resolution is only appropriate if (i) the Complainant and Respondent voluntarily agree to such resolution after receiving full disclosure of the allegations and their options for formal resolution, (ii) the assigned Institutional Equity Case Coordinator determines that facilitated resolution is an appropriate mechanism for resolving the complaint, and (iii) the allegations do not include Sexual Harassment when the Complainant is a student and the Respondent an employee. To make their determination about the appropriateness of facilitated resolution or to assist in the in the process of the facilitated resolution, the assigned Institutional Equity Case Coordinator may conduct interviews of the parties and/or witnesses or may assign Investigator(s) to do so. If the assigned Institutional Equity Case Coordinator determines any investigation is warranted, the appointment of Investigator(s) may be appealed in accordance with Section 8.01(B).

Facilitated resolution may not be selected for less than all of the misconduct alleged in the complaint (for example, the parties may not choose to resolve an allegation of Sexual Assault according to the formal resolution process but use the facilitated resolution process for all other allegations). If the parties agree to facilitated resolution (and facilitated resolution is determined to be appropriate), then all of the allegations must be resolved according to the facilitated resolution process.

Both parties have the right to terminate the facilitated resolution process at any time and request to proceed with formal resolution. Furthermore, the assigned Institutional Equity Case Coordinator may, where appropriate, terminate or decline to initiate facilitated resolution and proceed with the formal resolution process instead. In such cases, statements or disclosures made by the parties in the course of the facilitated resolution process, or in any interviews or investigation related to facilitated resolution, may be considered in the subsequent formal resolution proceedings.

- A. **The facilitator.** When the Complainant's complaint is to be resolved according to the facilitated resolution process, the assigned Institutional Equity Case Coordinator will oversee the process. The assigned Institutional Equity Case Coordinator will involve other individuals as deemed beneficial to the process (for example, a human resources representative for matters involving employees).
- B. **Notice of facilitated resolution.** The assigned Institutional Equity Case Coordinator will provide concurrent written notice to the Complainant and the Respondent setting forth the names of any individuals who will assist in the facilitated resolution, the alleged Prohibited Conduct that will be subject to the facilitated resolution process, and information regarding initial steps for facilitated resolution.
- C. **Advisors.** As provided in Section 6.10, both the Complainant and Respondent may have an Advisor present to support and assist them during the facilitated resolution process.
- D. **No Contact Prior to Facilitated Resolution.** The Complainant and the Respondent may not contact each other outside of the facilitated resolution process, even to discuss the process.
- E. **Participation.** Both the Complainant and the Respondent are expected to participate in the facilitated resolution. If either party fails to fully participate in the facilitated resolution, and such party was provided proper notice of the terms of facilitated resolution, including notice of any meetings, then absent extenuating circumstances, the assigned Institutional Equity Case Coordinator may direct that resolution of the complaint be determined according to the formal resolution process set forth in Article VIII or may reschedule or reevaluate the facilitated resolution.

## Section 10.02 The Facilitated Resolution Process

Facilitated resolution may include the following:

- **Resolution with the Assistance of a Third Party.** A Complainant may seek assistance in informally resolving a report of Prohibited Conduct from the assigned Institutional Equity Case Coordinator who may directly facilitate or may arrange to have a trained representative facilitate a meeting or meetings between the parties or individually with the parties. The availability of this form of facilitated resolution, and any resolution reached through such form of facilitated resolution, is subject to the agreement of the assigned Institutional Equity Case Coordinator in consultation with the Title IX Coordinator, the Complainant, and the Respondent.
- **Interventions and Remedies.** Facilitated resolution agreements may involve a host of interventions and remedies, such as actions designed to maximize the Complainant's access to educational, extracurricular, and/or College employment activities; increased monitoring, supervision, and/or security at locations or activities where the Prohibited Conduct is alleged to have occurred or is likely to reoccur; targeted or broad-based educational programming or training for relevant individuals or groups; academic and/or College housing modifications for student Complainants; workplace modifications for employee Complainants; one or more of the restorative remedies or other sanctions described in this Policy; and/or any other remedial or protective measures that can be tailored to the involved individuals to achieve the goals of this Policy.



Any form of facilitated resolution and any combination of interventions and remedies may be utilized. If an agreement acceptable to the College and the parties is reached through facilitated resolution, the terms of the agreement are implemented, and the matter is resolved and closed. If an agreement is not reached, and the assigned Institutional Equity Case Coordinator determines that further action is necessary, or if either party fails to comply with the terms of the facilitated resolution, the matter may be referred for an investigation and formal resolution under these procedures.

The Title IX Coordinator will maintain records of all reports and conduct referred for facilitated resolution, which typically will be completed within thirty (30) calendar days.

NOTE: A resolution that is reached pursuant to this section will not be included in a student Respondent's student conduct record or in an employee Respondent's personnel record unless the inclusion of such information is agreed to as part of the facilitated resolution of the matter.

At the conclusion of the facilitated resolution process, the assigned Institutional Equity Case Coordinator, in consultation with the Title IX Coordinator, may implement additional long-term remedies or actions per Section 8.06.

#### **EXHIBIT A: Glossary of Terms**

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if applicable.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint (or Formal Complaint)* means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the College investigate the allegation.
- *Confidential Resource* means an employee who is not a Mandatory Reporter required to report Sexual Harassment (irrespective of Clery Act Campus Security Authority status).
- *Formal Resolution Process* means a method of formal resolution designated by the College to address conduct that falls within the policies included within this Policy and complies with the requirements of 34 CFR Part 106.45.
- *Resolution Process Pool* includes any Investigators, Hearing Decision-makers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Decision-maker or Panel* refers to those with decision-making authority within the College's Formal Resolution process.

- *Investigator* means the person or persons charged by the College with gathering facts about an alleged violation of this Policy, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandatory Reporter* means an employee of the College who is obligated by policy to share knowledge, notice, and/or reports of Sexual Harassment (sexual harassment, dating violence, domestic violence, stalking, and sexual assault) with the Title IX Coordinator.
- *Official with Authority (OWA)* means an employee of the College explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of Wofford College.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Preponderance of the Evidence* is the standard of proof used to make determinations under this Policy. A preponderance of the evidence means that it is more likely than not that a violation occurred.
- *Prohibited Conduct*, or “conduct prohibited by this Policy,” refers to conduct that falls within any of the definitions in Article III of this Policy.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Resolution* means the result of a Facilitated or Formal Resolution Process.
- *Sanction* means a consequence imposed by the College on a Respondent who is found to have violated this Policy.
- *Sexual Harassment* is the umbrella category, including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence. See Section 3.03 for greater detail.
- *Title IX Coordinator* is the official designated by the College to ensure compliance with Title IX and the College’s Title IX program. References to the Coordinator throughout this policy may also encompass the Coordinator’s designee for specific tasks.
- *Institutional Equity Team* refers to the Title IX Coordinator, Institutional Equity Case Coordinators, and members of the Resolution Process Pool.

**EXHIBIT B: Suggested Actions for Victims of Sexual Assault**

While all types of discrimination, harassment, and retaliation are inappropriate and taken seriously by the College, actions involving Sexual Assault (as defined in Article III) are particularly concerning. Thus, if you are a victim of Sexual Assault, the College’s first priority is to help you take steps to address your safety, medical needs and emotional well-being. You are

encouraged to take the following actions, as applicable, regardless of whether you have made a decision about whether to pursue a criminal or College complaint.

- 1. Ensure your physical safety.** You may seek help from local law enforcement agencies or by contacting Wofford Campus Safety. Wofford Campus Safety can assist you with contacting local law enforcement and can help you obtain transportation to the local law enforcement office. Security personnel are on duty at Wofford Campus Safety 24 hours a day, seven days a week.
- 2. Seek medical assistance and treatment.** Local options for medical care include Spartanburg Medical Center and Spartanburg Regional – Mary Black Campus. It is crucial that you obtain medical attention as soon as possible after a Sexual Assault to determine the extent of physical injury and to prevent or treat sexually transmitted diseases (such as HIV). Medical facilities can also screen for sedative drugs such as Rohypnol or GHB (date-rape drugs).

Employees at the Wellness Center can help you obtain transportation to a local hospital and can help you contact a support person, such as a family member, a friend, or a roommate.

If you choose to have an evidence collection kit (or “rape kit”) completed, it is important to do so within 72 hours. Even if you have not decided whether to file charges, it is advisable to have the evidence collection kit completed so that you can better preserve the options of obtaining a protective order and/or filing criminal charges at a later date. Spartanburg Medical Center and Spartanburg Regional – Mary Black Campus administer evidence collection kits, and you can request an anonymous kit with no law enforcement involvement. Spartanburg Medical Center has specially trained sexual assault nurse examiners (SANEs) who administer these kits. The cost of these kits will be paid for from a crime victim fund, and you will not be billed for the kits.

In order to best preserve evidence for an evidence collection kit, it may be advisable to avoid showering, bathing, going to the bathroom, or brushing your teeth before the kit is completed. You also should wear (or take with you in a paper – not plastic – bag) to the hospital the same clothing that you were wearing during the assault. An evidence collection kit can still be completed even if you have showered or bathed.

- 3. Obtain emotional support.** The Wellness Center can help students process their emotions and begin the recovery process. The counselors at the Wellness Center are trained to provide crisis intervention on short-term and emergency issues. The Wellness Center also can provide referral services for outside providers and law enforcement. Counseling is free of charge to all students. In some instances, the law may require the disclosure of information shared by students with counselors. However, absent a legal mandate to the contrary, counseling services are confidential and are not part of students’ College records and will not be reported to other College personnel.

Employees may contact the Employee Assistance Program to obtain emotional support (available at 800-854- 1446).

**Obtain information/report misconduct.** You are encouraged to report incidents of Sexual Assault to the College’s Title IX Coordinator (even if you have filed a report directly with law enforcement). Further information about how to report Sexual Assault is provided in the body

of this Policy. The Title IX Coordinator can help you access resources and provide support and information, including information on the College's procedures for investigating and addressing instances of Sexual Assault.

## EXHIBIT C: Campus and Community Resources

The below list of campus and community resources was compiled for the use of the entire campus community. Any individuals seeking assistance from campus resources should note that college employees, with the exception of those noted as “confidential,” are considered “Mandatory Reporters” and must report to the Title IX Coordinator any information related to Sexual Harassment. Individuals who cannot find an appropriate resource below are encouraged to contact the Wellness Center (864-597-4370) or the Title IX coordinator (864- 597-4048) for assistance in identifying other options.

### 1. Campus Resources

**Wofford College’s Title IX Coordinator** is Matthew Hammett, whose office is in the Snyder House. He may be contacted during business hours Monday through Friday (8:30 a.m. to 5 p.m.) by phone at 864-597-4048 or in person in Snyder House. He also can be contacted by email at [hammettmk@wofford.edu](mailto:hammettmk@wofford.edu).

**Wofford Campus Safety** is located in the Mungo Student Center and is available by phone at 864-597-4911. Wofford Campus Safety Officers are available 24/7. Campus Safety also can contact the staff member on call.

**Medical Services** (confidential) are located in the Wellness Center and are available by phone at 864-597-4370 or 597-4367. The office is staffed from 7:30 a.m. to 4 p.m. Monday through Friday during the academic term.

Wofford’s **Mental Health Crisis Line** (confidential) is available 24/7 at 864-597-4393.

**Campus Life and Student Development** is located in the Mungo Student Center and is available by phone at 864-597-4040 or 597-4044. The office is staffed from 8:30 a.m. to 5 p.m. Monday through Friday.

**Human Resources** is located in the Joe E. Taylor Athletics Center and is available by phone at 864-597-4230. The office is staffed from 8:30 a.m. to 5 p.m. Monday through Friday.

**Counseling Services** (confidential for students) are located in the **Wellness Center** and are available by phone at 864-597-4370 or 597-4371. The center is staffed from 8:30 a.m. to 5 p.m. Monday through Friday.

The **Office of Financial Aid** is located in the Hugh S. Black building and can be contacted by phone at 864-597-4160. Financial aid is staffed from 8:30 a.m. to 5 p.m. Monday through Friday.

The **Office of International Programs** is located in the Michael S. Brown Village Center and can be contacted by phone at 864-597-4430. International programs is staffed from 8:30 a.m. to 5 p.m. Monday through Friday.

The College’s **Faculty Ombudsperson** (confidential for faculty and staff), Stacey Hettes, is located in the Milliken Science Center and can be contacted by phone at 864-597-4659.

The College **Chaplain** (confidential), Reverend Ron Robinson, is located in Main Building and can be contacted by phone at 864-597-4050.

## 2. Community Resources

**Spartanburg City Police Department** can be reached by calling 911 (or, for non-emergency matters, by calling 864-596-2222. The Spartanburg City Police Department is located at 145 West Broad Street in Spartanburg.

**Spartanburg Medical Center** is located at 101 East Wood Street in Spartanburg and is available by phone at 864-560-6000. Spartanburg Medical Center has special sexual assault nurse examiners (SANEs) who can collect evidence.

**Spartanburg Regional – Mary Black Campus** is located at 1700 Skylyn Drive in Spartanburg. The emergency department can be reached at 864-573-3000.

**Emergency Medical Services** can be reached at 911.

**SAFE Homes-Rape Crisis Coalition** is located at 236 Union Street in Spartanburg and is available by phone at 864-585-9569. Its crisis hotline is available 24/7 at 800-273-5066. Safe Homes provides services to people affected by sexual violence, dating violence, domestic violence or stalking.

**South Carolina Legal Services (Spartanburg)** provides legal assistance in Spartanburg, including assistance with immigration matters. The office is located at 148 East Main Street in Spartanburg and can be reached at 864-582-0369.

**South Carolina Victims Assistance Network** provides free legal assistance to survivors of sexual assault. They can be reached at 803-750-1200, Option 2, for the Legal Assistance to Victims Program.

**National Suicide Prevention Lifeline** provides free and confidential support for people in distress. Counselors are available 24/7 at 800-273-8255. Additional information and resources are available at [www.suicidepreventionlifeline.org](http://www.suicidepreventionlifeline.org).

### EXHIBIT D: Statement of the Title IX/VAWA Rights of Parties

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to College officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.

- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by College officials.
- The right to have College policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by College officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
- The right to be informed by College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by College authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by Wofford Campus Safety and/or other College officials.
- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
- The right to a College-implemented no-contact order when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the party or others.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - Providing an individual to escort a Complainant and/or Respondent between on-campus classes, work, and/or activities
  - Altering campus housing assignments
  - Safety planning
  - Arranging to dissolve a campus housing contract and offering a pro-rated refund.
  - Altering work arrangements or schedules.
  - Class schedule modifications, incompletes, or withdrawals
  - Rescheduling class work, assignments, and examinations.
  - Academic support services.
  - Referral for counseling and/or medical services
  - Visa and immigration assistance

- Student financial aid counseling
- The right to have the College maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the College's ability to provide the supportive measures.
- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
- The right not to have irrelevant prior sexual history or character admitted as evidence.
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of the investigation report, including all factual and/or policy analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) calendar days to review the report prior to the hearing.
- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.
- The right to a Hearing Panel that is not single-sex in its composition if a panel is used.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any College representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.



- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
- The right to the use of the appropriate standard of evidence, the preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence.
- The right to be present via remote technology during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale therefor (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the College is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal during the resolution process and the procedures for doing so in accordance with the standards for appeal established by the College.
- The right to a fundamentally fair resolution as defined in these procedures.

## **EXHIBIT E: Training and Education**

### **OUTREACH & PREVENTION**

Wofford College is committed to the prevention of discrimination, harassment, and retaliation and routinely conducts outreach and educational programming designed to increase awareness of the prevalence of Sexual Harassment involving college-age students and other College constituents, as well as other forms of discrimination and harassment; inform the Wofford community about issues related to harassment and discrimination, such as substance abuse and the role of the bystander' and promote knowledge of the College's policies and procedures.

### **TRAINING**

The College regularly conducts training for its constituents, including the following groups:

- Title IX Coordinator and Institutional Equity Case Coordinators
- Resolution Process Pool
- Employees
- Students
- Campus Safety Officers

These groups are trained, as appropriate and applicable, on such subjects as:

- The Nondiscrimination and Anti-Harassment Policy and Procedures.
- Title IX and related regulatory guidance.
- Discrimination laws related to employment and education
- The College's responsibility to address allegations of discrimination, harassment, and retaliation.
- Recognizing and responding to reports of discrimination, harassment, and retaliation.
- Understanding the effect of discrimination and harassment on victims.
- Understanding the link between substance abuse and Sexual Harassment.
- Which employees are Mandatory Reporters and which individuals and offices are Confidential Resources.
- Reasonable, appropriate, and sensitive investigative and interview techniques.
- Issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking.
- Conducting reliable, impartial, and fair investigations and determinations.