

Western New England University Sexual Harassment/Title IX Policy

I. INTRODUCTION

The University provides equal access and participation in all University activities without regard to sex. Sexual harassment is a form of discrimination on the basis of sex and prohibited under Title IX of the Higher Education Amendments of 1972. If this conduct occurs off campus, it may fall under the purview of Title IX and Title VII and the University reserves the right to act on incidents occurring off campus. Title IX applies to persons in the United States with respect to educational programs or activities that receive federal funding. The University must respond when sexual harassment occurs in the University's educational programs, against a person while in the United States.

In addition to the above-mentioned regulations, the University also complies with the Violence Against Women Reauthorization Act of 2013 (VAWA) The Clery Act, and The Campus SaVE Act.

This University policy may apply to any individual who participates in the University community as a student, faculty, staff, visitor, minor, or any other persons having dealings with the institution. This policy may apply to allegations of sexual harassment that occur on-campus, off-campus, or online.

The Assistant Vice President/Director of Human Resources serves as the EEO Officer and ADA 504 Coordinator and oversees the University's compliance efforts with discrimination and equal opportunity.

The General Counsel serves as the Title IX Coordinator and oversees the University's compliance efforts with sexual harassment.

Because the University takes allegations of sexual harassment very seriously, the University will respond promptly to complaints of sexual harassment and will take appropriate action where it is determined that such inappropriate conduct has occurred. Furthermore, the University will act promptly to eliminate the conduct and impose such corrective action and sanctions as necessary. Any act of discrimination, bias, or harassment, that does not fall under Title IX and involve students will be adjudicated through the Student Code of Conduct. Any acts of discrimination, bias, or harassment that do not fall under Title IX and involve employees will be adjudicated through their designated handbook in consultation with Human Resources.

Internal inquiries or reports about violations of this policy may be made to:

Title IX Coordinator

Cheryl Smith

General Counsel and Title IX Coordinator

Deliso Hall, Room 102

(413) 782-1542

csmith@wne.edu

ADA/504 Coordinator, Equal Employment Opportunity Officer

Joanne Ollson
Assistant Vice President and Director of Human Resources
Rivers Hall, Room 104
(413) 782-1343
joanne.ollson@wne.edu

Deputy Title IX Coordinators

Sean Burke
Assistant Director, Career Development Center
St. Germain Campus Center, Room 235C
(413) 782-1564
sean.burke@wne.edu

Lori Mayhew-Wood
Associate Director of Athletics/SWA/Director of Equipment Management
Alumni Healthful Living Center, Room 105B
(413) 796-2230
lori.mayhew@wne.edu

University Title IX Educator

Beth Hill
Director of Community Standards and Education
St. Germain Campus Center, Room 226
(413) 796-1282
bhill@wne.edu

Inquiries may be made externally to Office for Civil Rights (OCR)

US Department of Education
400 Maryland Ave SW
Washington, DC 20202-1100
Customer Service Hotline # (800) 421-3481
Facsimile (202) 453-6012
TDD# (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Boston Office-EEOC
John F. Kennedy Federal Building
475 Government Center
Boston, MA 02203
Phone: 1-800-669-4000
Fax: 617-565-3196

Complaints can be filed Monday through Friday, from 8:30am to 3:00 pm.

Massachusetts Commission Against Discrimination (MCAD)
436 Dwight Street, Room 222
Springfield, MA 01103

II. ACCOMMODATION OF DISABILITIES

The University is committed to full compliance with the American with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against qualified persons with disabilities.

The Assistant Vice President and Director Human Resources has been designated as the ADA/504 Coordinator for the University, responsible for coordinating efforts to comply with all disability laws.

Employees requesting reasonable accommodation should complete the ADA Accommodation Request Form found on the Human Resources web page at: http://www1.wne.edu/human-resources/doc/BenefitsInfoForms/Disability-LOA/ADA_Accommodations.pdf
Students requesting accommodation should contact the Office of Student Accessibility Services located in Herman Hall, Room 105.

III. PROHIBITED CONDUCT

The prohibited conduct as outlined in this section applies to students, faculty, staff, administration, minors, or visitors that occur on-campus, off-campus, or online.

A. Sexual Harassment¹

In compliance with the Title IX regulations, released on May 19, 2020, the University defines sexual harassment as: 1) any instance of *quid pro quo* harassment or “this for that” harassment, 2) any unwelcome conduct that a reasonable person would find so severe and pervasive, and objectively offensive that it denies a person equal educational access, or 3) any instance of sexual assault, dating violence, domestic violence, or stalking as defined below.

B. Sexual Assault²

Sexual Assault means an offense classified as forcible or non-forcible sexual offense under the uniform crime reporting system of the Federal Bureau of Investigation. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances when the victim is incapable of giving consent. For the purposes of this definition, consent

¹ <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>

² <https://www.law.cornell.edu/uscode/text/20/1092>

means voluntary, affirmative agreement between participants to engage in specific sexual activity.

Rape: Penetration, no matter how slight, of the vagina or anus, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of all persons.

Fondling: Touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental capacity.

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Sexual intercourse with a person who is under the age of consent.

C. Dating Violence³

As defined by the Violence Against Women Act (“VAWA”), dating violence is, “violence and abuse committed by a person to exert power and control over a current or former dating partner. Dating violence often involves a pattern of escalating violence and abuse over a period of time. Dating violence covers a variety of actions, and can include physical abuse, physiological and emotional abuse, and sexual abuse. It can also include electronic abuse, which is the use of technology, such as smartphones, the internet, or social media, to intimidate, harass, threaten, or isolate a victim.”

D. Domestic Violence⁴

As defined by VAWA, domestic violence is, “a pattern of abusive behavior in a relationship that is used by one partner to maintain power and control over another current or former intimate partner. Domestic violence can be physical, sexual, emotional, economic actions or threats of actions that influence another person. This includes any behavior that intimidates, manipulates humiliates, isolates, frightens, terrorizes, coerces, threatens, hurts, injures, or wounds someone.”

E. Stalking⁵

As defined by VAWA, stalking is, “a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking is dangerous and can often cause severe and long-lasting

³ <https://www.justice.gov/file/29836/download>

⁴ <https://www.justice.gov/file/29836/download>

⁵ <https://www.justice.gov/file/29836/download>

emotional and psychological harm to victims. Stalking often escalates over time and can lead to domestic violence, sexual assault, and even homicide. Stalking can include frightening communications, direct or indirect threats, and harassing a victim through the internet.”

F. Serial Sexual Misconduct

Serial Sexual Misconduct means any actual or alleged illegal or otherwise wrongful sexual conduct with more than one victim and committed by an employee, student, volunteer, visitor, contractor, and/or vendor of the University.

G. Child Molestation

Child Molestation means any actual or alleged illegal or otherwise wrongful sexual conduct with a minor.

IV. REPORTING

Any person may report instances of the prohibited conduct as outlined above, regardless of whether the reporting person is the victim of such conduct. Reports can be made in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator. Reports can be made at any time, including during non-business hours, by using the telephone number, e-mail address or by mail to the office address, listed for the Title IX Coordinator.

There are three federal laws that establish responsibilities for employees of universities to report certain types of crimes and incidents, especially sexual misconduct: the Clery Act, Title IX of the Higher Education Amendments of 1972, and Title VII of the Civil Rights Act of 1964. Each of these areas of federal law has a different purpose, but generally the laws are intended to protect members of the campus community, visitors, and guests from criminal and discriminatory behavior. The responsibilities established by these laws give rise to the term “responsible employees.” Responsible Employees must report alleged acts of sexual harassment to the Title IX Coordinator or Deputy Title IX Coordinators.

A. Responsible Employees

The University has defined all employees, both faculty and staff, as responsible employees (except for health care professionals and any other individuals who are statutorily prohibited from reporting). When an employee becomes aware of an alleged act of sexual harassment, sexual misconduct, sexual assault, domestic violence, dating violence, or stalking, the employee must promptly contact the Title IX Coordinator or one of the Deputy Coordinators. The Coordinator or Deputy will use the Complaint Reporting Form ([see Attachment](#)) when gathering the initial information. If the Complainant does not want to meet with the Title IX Coordinator or Deputy Coordinator, the employee receiving the complaint should print the form and complete it with the Complainant. The printed form should be hand delivered to the Title IX Coordinator and not sent electronically or through regular campus mail.

B. Reporting Officers

The University has also designated the following individuals as “Reporting Officers”:

- President
- Provost
- Vice President of Finance and Administration
- General Counsel
- Vice President of Student Affairs and Dean of Students
- Title IX Coordinator
- Athletic Director
- Director of Health Services
- Director of Counseling Services
- Vice President and Director of Human Resources

Reporting Officers, who have actual knowledge or reasonable suspicion that an act of sexual harassment, sexual assault, domestic violence, dating violence, serial sexual misconduct, child molestation, or stalking has occurred, are expected to report such incidents to the Title IX Coordinator immediately.

C. Confidentiality of Reports

The University keeps the identities of anyone making a report or complaint of sexual harassment, the parties, and any witnesses confidential, except as permitted by Family Educational Rights and Privacy Act (FERPA) or required by law. Any responsible employee and reporting officer should inform the Complainant that the University will maintain the privacy of the information to the greatest extent practicable. The responsible employee or reporting officer must report the allegation to the Title IX Coordinator or Deputy Title IX Coordinators.

All Complainants should be given a copy of the Harassment, Discrimination and Retaliation Reporting Pamphlet and the Emergency Information and Resources document. These resources are located on the Title IX webpage (<https://www1.wne.edu/title-ix/resources.cfm>).

The University will respect the privacy of the identities of all parties and protect their identities to the fullest extent practicable under the circumstances. The names of the parties will be exchanged between the Complainant and Respondent, and if necessary, witnesses.

D. Reporting Serial Sexual Misconduct by University Employees or Volunteers

Any University employee or volunteer that has actual knowledge or reasonable suspicion of alleged serial sexual misconduct must promptly contact the Title IX Coordinator or one of the Deputy Title IX Coordinators. Any employee who fails to contact the Title IX Coordinator or Deputy Coordinators may face discipline up to and including termination.

E. Reporting Sexual Abuse of Minors by any University Affiliated Individual

Sexual abuse of minors is strictly prohibited by anyone who is affiliated with the University. This includes, but is not limited to, University employees, students, volunteers, or visitors. This policy prohibits the sexual abuse of minors for both on-campus activities and University-sponsored off-campus activities.

A University employee or volunteer who has actual knowledge or reasonable suspicion of alleged sexual abuse of a minor must promptly contact the Title IX Coordinator or one of the Deputy Title IX Coordinators. Any employee who fails to contact the Title IX Coordinator or Deputy Title IX Coordinators may face discipline up to and including termination.

Any report of sexual abuse of minors will be investigated subject to this policy. In addition, the University will comply with all state mandated reporting law relating to minors. University employees and volunteers are required to directly report actual knowledge of sexual abuse of minors to the Massachusetts Department of Children and Families. For more information regarding the Massachusetts Department of Children and Families reporting requirements for child abuse, visit <https://www.mass.gov/how-to/report-child-abuse-or-neglect>.

F. Reporting Sexual Abuse of Students by University Faculty/Staff/Volunteer

Any actual knowledge or reasonable suspicion of sexual abuse of a student by a member of the University faculty, staff, or volunteer must be reported to the Title IX Coordinator or Deputy Title IX Coordinators. The University investigates every report of suspected sexual abuse of a student by faculty, staff, and volunteers affiliated with the University.

G. Reporting Sexual Abuse of Students or Minors by Medical Staff

This policy also applies to all medical staff affiliated with the University, including but not limited to, health services staff, athletic trainers, and visiting medical professionals.

Any University employee or volunteer who has actual knowledge or reasonable suspicion of sexual abuse of a student or minor by a member of the University affiliated medical staff must report to the Title IX Coordinator or Deputy Title IX Coordinators. Any employee who fails to contact the Title IX Coordinator or Deputy Title IX Coordinators may face discipline up to and including termination.

V. OVERVIEW OF SEXUAL HARASSMENT/TITLE IX PROCESS

A. Definitions

*Complainant*⁶: an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

⁶ <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>

*Respondent*⁷: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Intake Interview: The initial meeting between the Title IX Coordinator and the Complainant after the University receives a report of alleged sexual harassment.

*Formal Complaint*⁸: A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent with the expectation that the University will evaluate the allegation.

*Document Filed by a Complainant*⁹: A document or electronic submission (such as by e-mail or through an online portal provide for this purpose by the school) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.

*Supportive Measures*¹⁰: individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party, while designed to ensure equal educational access, protect safety, or deter sexual harassment or discrimination.

*Actual Knowledge*¹¹: Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has the authority to institute sanctions on behalf of the recipient.

Advisor: a friend, faculty member, family member or legal counsel that assists the Complainant or Respondent throughout the Sexual Harassment/Title IX Grievance Process. Parties are required to have an Advisor. The University will appoint an Advisor for a party who does not voluntarily choose one.

Investigator: a trained individual in the University community who interviews all parties and witnesses, compiles statements, verifies statements, gathers documentation, reviews evidence, conducts research, and drafts an investigative report to submit to the Title IX Coordinator.

Administrative Educational Conduct Review: the process for determining responsibility for allegations of sexual harassment when such allegations cannot be informally resolved.

⁷ <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>

⁸ <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>

⁹ <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>

¹⁰ <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>

¹¹ <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>

Procedural Facilitator: a non-voting member of the Administrative Educational Conduct Review Process, who ensures compliance with the University's Sexual Harassment/Title IX Grievance process and relevant laws.

Administrative Educational Conduct Review Officers: the two voting members of the Conduct Review process who determine responsibility. Review Officers pose questions to the parties and witnesses.

B. General Requirements

- The University will objectively evaluate all relevant information and evidence and will avoid credibility determinations based on a person's status as a Complainant, Respondent, or witness.
- The University will conduct the investigation with the presumption that the Respondent is not responsible for the alleged conduct until a determination of responsibility can be made at the conclusion of the process.
- The University Title IX personnel will be free from conflicts of interest or bias for or against Complainants and Respondents.
- The University Title IX Coordinator and Investigators will not play a role in the determination of responsibility.
- The University Title IX personnel are trained on what constitutes sexual harassment, how to conduct investigations, Administrative Educational Conduct Reviews, appeals, and resolution processes.
- The University Title IX personnel are trained on how to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- The University will determine responsibility by a preponderance of the evidence (a more likely than not) standard.
- When the University has actual knowledge of sexual harassment, it will respond in a way that is not deliberately indifferent, or clearly unreasonable in light of the circumstances.

C. Rights of Complainant and Respondent

1. The right to be treated with respect by University officials.
2. The right to be notified of available counseling, mental health or other services, both on and off campus.
3. The right not to be discouraged by University officials from reporting an assault to both on campus and off campus authorities.
4. The right to be free from retaliation.
5. The right to an Advisor during the process.

6. The right to be informed in advance, when possible, of any public release of the information regarding the complaint.
7. The right to written notice of the outcome and sanction of the Administrative Educational Conduct Review.
8. The right to a fundamentally fair resolution as defined in these procedures.
9. The right to an outcome based solely on the evidence presented during the process.

B. Filing a Formal Complaint

When the Title IX Coordinator receives the report, they will promptly contact the Complainant for an intake interview. In the intake interview, the Title IX Coordinator will discuss the availability of supportive measures at the University and the process for filing a Formal Complaint. The Title IX Coordinator will offer supportive measures, regardless of whether or not the Complainant wishes to file a Formal Complaint. The University will not impose any disciplinary sanctions against the Respondent until a determination of responsibility can be made at the conclusion of the grievance process.

Upon the filing of a Formal Complaint by the Complainant, the Title IX Coordinator, in consultation with the Deputy Title IX Coordinators, will assess the complaint to determine if the alleged conduct by the Respondent meets the definition of sexual harassment.

The Title IX Coordinator, in their discretion, can file a Formal Complaint on behalf of the University if the Complainant is reluctant or unwilling to file a Formal Complaint and/or participate in the process. This decision will be used in circumstances where the gravity of the allegations present a significant risk to the University community. If the Complainant is under the age of 18, their parents or legal guardian may file a Formal Complaint on their behalf.

If the Formal Complaint does NOT meet the definition of sexual harassment, then the Title IX Coordinator will dismiss the Formal Complaint for the purposes of Title IX. However, this does not preclude the University from addressing the allegations in the Student Code of Conduct or relevant employee disciplinary proceedings.

If the Title IX Coordinator, in consultation with the Deputy Title IX Coordinators, believes that the Formal Complaint does meet the definition for sexual harassment for cases involving students, the Title IX Coordinator will forward the Formal Complaint to the Vice President for Student Affairs/Dean of Students for assignment to an Investigator. At any point, the Title IX Coordinator may permit an informal resolution if both parties voluntarily consent to an informal resolution process in writing (see section VII. Informal Resolution for more information). Prior to offering the informal resolution, the Title IX Coordinator will consult with the Vice President for Student Affairs/Dean of Students.

If the Title IX Coordinator, in consultation with the Deputy Title IX Coordinators, believes that the Formal Complaint does meet the definition for sexual harassment for cases involving

employees, the Title IX Coordinator will forward the Formal Complaint to the Assistant Vice President and Director of Human Resources for assignment to an Investigator. At this point, the Title IX Coordinator may permit an informal resolution if both parties voluntarily consent to any informal resolution process in writing (see section VII. Informal Resolution for more information). Prior to offering the informal resolution, the Title IX Coordinator will consult with the Vice President and Director of Human Resources.

The University cannot offer informal resolution in cases involving allegations that an employee sexually harassed a student.

C. Written Notice of Allegations

The Title IX Coordinator will provide a timely written notice of the allegations to the parties, along with a description of the Sexual Harassment/Title IX Grievance Process, prior to their preliminary interviews with either party. The written notice should include:

1. The identity of the parties (if known)
2. The conduct alleged to be sexual harassment
3. The alleged conduct's date and location
4. A statement that the Respondent is presumed not responsible until a determination is made at the end of the Sexual Harassment/Title IX Grievance Process.
5. A statement informing parties that they are entitled to an Advisor of their choice. However, if a party does not identify an Advisor within 5 business days of the allegation letter, the University will assign one to them.
6. A statement informing the parties that any false statements made in a Sexual Harassment/Title IX proceeding will be adjudicated through the Student Code of Conduct or employee disciplinary process.
7. An inquiry as to whether the parties will require any accommodations.

If any additional allegations are later made, an updated written notice of allegations must be provided to the parties.

D. Advisors

Parties are permitted to select an Advisor. Parties may select an attorney as an Advisor, although they are not required to. Each party is limited to only one Advisor. No witnesses are permitted to be an Advisor. In order to schedule any investigative interviews or meetings, the University must send written correspondence to the party and their Advisor.

If a student/employee who is party to a Title IX Investigation has legal counsel as an Advisor, all communications as to process and procedures relevant to the University's process will be communicated directly to the party's legal counsel by the Office of the General Counsel of the University.

If the Complainant or Respondent does not have an Advisor within five (5) business days after the written notice of allegations, the University will provide, without fee or charge to that party,

an Advisor of the University's choice, who may be, but is not required to be, an attorney on behalf of that party.

E. Supportive Measures

Upon the filing of a Formal Complaint, the University reserves the right to implement equitable supportive measures for the health and safety of the Complainant and the Respondent, and the University community, so long as the measures are not punitive, disciplinary, or overly burdensome on one party. Supportive measures will be equitably implemented on a case by case basis.

The University reserves its right to temporarily remove a Respondent from campus prior to the conclusion of the Sexual Harassment/Title IX Grievance Process if the University reasonably believes that the Respondent presents a threat to the University community.

F. Range of Sanctions for Students

1. *Dismissal from the University:* Dismissal is permanent removal from University programs, facilities, and property without the privilege of re-admission or access. This sanction will be recorded in the student's file and on the student's transcript. Notations on the transcript will be for a minimum length of time, to be designated by the Review Officers at the time the sanctions are imposed. Once disciplinary action against a student has been initiated, including the appeal process, a hold will be placed on any requests for transcripts.
2. *Suspension from the University:* Suspension from the University is a sanction for a stated period of time or until specific conditions have been met. During the period of suspension, the student is not permitted access to University property, facilities, or programs. Suspension is noted in the student's file and on the student's transcript during the term of suspension. If suspension occurs during a semester in progress, University practice mandates that all courses become administrative withdrawals.
3. *Removal from University Housing:* This sanction entails forfeiture of student housing privileges for a stated period of time, including visitation restrictions to any residence area owned or operated by the University. If loss of residency occurs during a semester, the balance of the room and board fee is non-refundable and non-transferable.
4. *Disciplinary Probation:* Disciplinary probation may be assigned for a stated period of time during which a student's ability to participate in co-curricular or University sponsored activities, the use of facilities, or to benefit from other University privileges may be limited or removed. During the probationary period,

any violation by the student may be grounds for removal from University housing or suspension or dismissal from the University.

5. *Removal from University Sponsored Travel or Travel Booked through the University:* This sanction involves the forfeiture of traveling privileges for a stated period of time or for a specific trip sponsored by or booked through the University. All students must be in good standing with the University to be eligible to participate in these initiatives. Examples of University sponsored travel include, but are not limited to: international study abroad programs, alternative spring break trips, and extended trips by athletic teams of the University. Any deposit paid by a student for University sponsored travel will be nonrefundable should the student be removed from the trip due to academic, disciplinary, or other reasons prior to departure.
6. *Campus Restrictions and/or Modifications:* Re-assignments to housing or restrictions from varied residential areas may be imposed as part of sanction.
7. *Fines or Restitution:* This sanction entails reimbursement to the University or a third party for damage done to a person or property and/or accountability for specific acts of misconduct.
8. *Censure:* Censure may be assigned for a stated period of time. It is a written statement given to the student for misconduct warranting a stronger reprimand than a simple written warning. Further misconduct of a related or similar nature may warrant probationary status.
9. *Warning:* This is an oral or written statement to the student that they have violated the Student Code of Conduct. A warning may be taken into account in judging the seriousness or determining sanctions for future violations.
10. *Educational Sanctions:* Educational sanctions are intended to promote student learning as a result of misconduct and may include counseling referrals, a formal apology, and assignments to educational programs, a research or self-reflection paper or any other type of similar action. A failure to fulfill educational sanctions in a satisfactory manner may be cause for further accountability.

* The University reserves the right to put the status of any sanction in abeyance. This means the sanction is on hold. Any further misconduct may result in immediate implementation of the without right to an appeal.

G. Range of Sanctions for Employees

1. *Dismissal:* Permanent removal from employment and University programs, facilities, and property.

2. *Suspension (with or without pay)*: A separation from the University for a stated period of time or until certain conditions are met.
3. *Probation*: a stated period of time within which the Respondent's rights to participate in University-sponsored activities and/or access to facilities may be limited or removed
4. *Referral to Counseling or Training*
5. *Transfer or Change in Department or Teaching Duties*
6. *Warning*
7. *Written Apology*

H. Time Frame

Barring unforeseen circumstances, and with allowance for short-term, good cause delays or extensions of the time frame, the University is committed to resolving the Sexual Harassment/Title IX Grievance Process within approximately 100 business days of the filing of the Formal Complaint.

VI. INFORMAL RESOLUTION

Informal resolution is available to parties following the filing of a Formal Complaint any time up to an Administrative Educational Conduct Review , so long as both parties have been provided written notice of the allegations. Some claims of sexual harassment may be resolved informally, so long as the parties give voluntary, informed, written consent to attempt informal resolution. Some examples of informal resolutions include:

- Mediation between the Complainant and Respondent; and
- Conducting educational programs for groups or individuals.

The purpose of informal resolution is to implement an appropriate solution acceptable to all parties concerned. The person conducting the informal resolution will work with the Complainant and Respondent to reach an informal resolution. If the Respondent is a faculty member, the Dean of the respective School or College will participate in the resolution process. At the conclusion of the informal process, a memorandum of understanding will be signed by both parties.

In the event that the informal process does not achieve resolution of the issue, an Administrative Educational Conduct Review will be implemented. Further, at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Sexual Harassment/Title IX Grievance Process.

The University cannot offer informal resolution in cases involving allegations that an employee sexually harassed a student.

VII. INVESTIGATION

A. Overview of Investigation

An Investigator will interview all parties and witnesses, compile statements, verify statements, gather documentation, review evidence, conduct research, and draft a report to submit to the Title IX Coordinator.

The burden of gathering evidence and the burden of proof remains solely on the University. Neither the Complainant nor Respondent are responsible to produce evidence, unless they do so voluntarily. The University will provide equal opportunity for the parties to present facts, expert witnesses, witnesses, and other information and evidence. The University will not restrict either party from gathering evidence nor discussing the allegations. The University is not permitted to access or use medical, psychological, or treatment records, unless provided by one of the parties with their written consent.

B. Conclusion of Investigation

At conclusion of the investigation, the Investigator will author an investigative report that fairly summarizes all evidence that was gathered. The University will send the investigative report, along with all evidence gathered related to the allegations, in written or electronic format, to the parties and their Advisors. At this point, the parties and their Advisors will have 10 business days to inspect, review, and respond to the investigative report and evidence before the investigative report and evidence is finalized. Responses should be directed to the Investigator.

The finalized investigative report and all evidence will be presented to the Title IX Coordinator at the conclusion of the investigation. The Title IX Coordinator, in consultation with the Deputy Title IX Coordinators, will review the investigative report and all evidence. If the evidence shows that the alleged conduct does not meet the definition of sexual harassment or discrimination, the University must dismiss the matter for the purposes of Title IX. The parties will have 10 business days to review the final investigative report and evidence submitted to the Title IX Coordinator. However, it does not preclude the University from addressing the allegations in the Student Code of Conduct or Faculty/Staff Disciplinary Policy.

Alternatively, the University may dismiss the Formal Complaint if the Complainant informs the Title IX Coordinator in a signed writing that they desire to withdraw their complaint or allegations. However, the University reserves its right to proceed with the Sexual Harassment/Title IX Grievance process in the event that the Complainant withdraws their complaint.

If the Title IX allegations are dismissed by the Title IX Coordinator, the University will issue a written notice of dismissal to the parties that outlines the reasons for dismissal.

After reviewing the investigative report and evidence, if the Title IX Coordinator, in consultation with the Deputy Title IX Coordinators, believes that the definition for sexual harassment or discrimination is met, they will forward the determination to the Vice President for Student Affairs/Dean of Students for cases involving students or to the Assistant Vice President and Director of Human Resources for cases involving employees for the assignment of Administrative Educational Conduct Review Officers. The finalized investigative report and evidence will be sent to the parties and their Advisors at least ten days before the Administrative Educational Conduct Review.

VIII. SEXUAL HARASSMENT/TITLE IX GRIEVANCE PROCESS

A. Initiation of the Administrative Educational Conduct Review

After reviewing the investigative report and evidence and determining the alleged conduct meets the definition of sexual harassment, the Title IX Coordinator may forward the matter for an Administrative Educational Conduct Review. For cases involving students, the Title IX Coordinator will forward the case to the Vice President for Student Affairs/Dean of Students. For case involving employees, the Title IX Coordinator will forward the matter to the Assistant Vice President and Director of Human Resources for an Administrative Educational Conduct Review

The Title IX Coordinator, or their designee, creates three identical packets of case materials and delivers them to the Vice President for Student Affairs/Dean of Students for case involving students or Assistant Vice President and Director of Human Resources for cases involving employees, or their designee. Then, the Vice President for Student Affairs/Dean of Students, the Assistant Vice President and Director of Human Resources, or their designee, assigns Administrative Educational Conduct Review Officers and distributes case materials:

- a. One case material packet for each of the Administrative Educational Conduct Review Officers
- b. One case material packet for Procedural Facilitator

Administrative Educational Conduct Reviews are conducted by two (2) Administrative Educational Conduct Review Officers.

Administrative Educational Conduct Reviews are audio recorded.

The Administrative Educational Conduct Review Officers will consider relevant written reports, as well as verbal and/or written statement by the Complainant, Respondent, and witnesses. Decisions regarding responsibility will be based on a preponderance of the evidence (a more likely than not) standard that a Sexual/Harassment/Title IX or other University policy violation(s) occurred.

C. Rights to Parties

Prior to an Administrative Educational Conduct Review, the Complainant and Respondent are

entitled to:

1. A Pre-Review informational meeting with the Procedural Facilitator, during which:
 - a. any written, audio and/or video evidence about the alleged misconduct will be reviewed and explained;
 - b. a written outline of the Administrative Educational Conduct Process is provided and discussed;
 - c. a written statement identifying the section of the Sexual Harassment/Title IX policy that was allegedly violated and the range of sanction(s) that may apply.

2. The Complainant(s) and Respondent(s) will receive written notice a minimum of two (2) business days in advance of the Administrative Educational Conduct, unless circumstances warrant otherwise. Circumstances are determined at the discretion of the Administrative Educational Conduct Review Officers. This written notice shall include:
 - a. the name(s) of person(s) asked to attend the Administrative Educational Conduct Review by the University;
 - b. the date, time and location of the Administrative Educational Conduct Review; and
 - c. the specific charge(s) relating to the alleged misconduct.

3. If the Complainant(s) and/or Respondent(s) does not appear for a scheduled meeting (and does not contact the Procedural Facilitator within 24 hours to reschedule) or does not provide an accurate postal mail address, valid email address and/or current phone number to convey information to them after the meeting, the University will proceed with the Administrative Educational Conduct Review.

4. Complainant(s) and Respondent(s) are responsible for:
 - a. Cooperating with University officials during the Administrative Educational Conduct Review process;
 - b. Notifying the University of any change in residence or address, including phone number and email address to contact them;
 - c. Reviewing all case materials and obtain clarification in advance, if necessary;
 - d. Attending scheduled meetings and the Administrative Educational Conduct Review on time;
 - e. Providing, in accordance with University procedures, a list of witnesses and Advisor requested to attend a review within 72 hours of the pre-review. **A witness may be a parent, legal guardian or non-University affiliated individual; however, they must have first-hand information pertaining to this matter or be an expert witness in related subject matter.**
 - f. Providing or presenting, if they so choose, a written statement at the time of the

Administrative Educational Conduct Review.

- g. The Complainant(s) and Respondent(s) failure to appear for an Administrative Educational Conduct Review will result in a decision being rendered on the basis of reports and witnesses in attendance, thereby forfeiting their right to seek further review of any and all decisions made during the Administrative Educational Conduct Review Process.

5. Right to an Advisor:

- a. Each party is required to have an Advisor. An Advisor may be a friend, faculty member, family member or legal counsel. The Advisor cannot be a witness.
- b. Advisors are permitted to attend all parts of the process. The Review Officer, at their discretion, may seek out clarification or information from the Advisor.
- c. The Complainant(s) and Respondent(s) must submit the name of the Advisor within five (5) business days after the written notice of allegations.
- d. If the Complainant or Respondent does not have an Advisor within five (5) business days after the written notice of allegations, the University will provide, without fee or charge to that party, an Advisor of the University's choice, who may be, but is not required to be, an attorney on behalf of that party.

6. Right to a Live Administrative Educational Conduct Review

- a. Administrative Educational Conduct Review will be conducted live and audio recorded
- b. At the request of either party, the University must be able to facilitate the entire Administrative Educational Conduct Review to occur with the parties in separate rooms with technology enabling the parties to see and hear one another.

D. Administrative Educational Conduct Review Procedures

Prior to the Administrative Educational Conduct Review:

- 1. The Procedural Facilitator, creates a letter to both parties outlining:
 - a. the date/time/location of the Administrative Educational Conduct Review;
 - b. Administrative Educational Conduct Review Officers' names;
 - c. alleged violation(s);
 - d. the witnesses for the University, Complainant and Respondent; and
 - e. Advisors for the Complainant and Respondent.

This letter will be emailed directly to the Complainant and Respondent.

- 2. The Procedural Facilitator contacts the witnesses of the University to inform them of the

date, time and location of the Administrative Educational Conduct Review.

The witnesses are brought into the waiting room, whereby the expectations are set forth, in writing, for their role.

3. Both Complainant and Respondent and their Advisors are present throughout the Administrative Educational Conduct Review
 - a. Each Advisor is given an outline regarding their role in the Administrative Educational Conduct Review.
 - b. If the Advisor is a practicing attorney, the General Counsel will contact them and review the Administrative Educational Conduct Review Process. A copy of the process with attorney expectations is also shared.

During the Administrative Educational Conduct Review:

4. The alleged violations are summarized and presented to the parties, witnesses, Advisors, and Administrative Educational Conduct Review Officers by the Procedural Facilitator. Then, the Administrative Educational Conduct Review Officers present the role of the Advisor and other expectations of Administrative Educational Conduct Review to the Complainant, Respondent, and Advisors.
5. At any point during the Administrative Educational Conduct Review, Administrative Educational Conduct Review Officers can direct questions to parties and witnesses to seek clarification or relevant information.
6. The Complainant and Respondent provide, verbally and in writing, an opening statement.
7. The Procedural Facilitator invites witnesses individually to verbally share their information.
8. Each party's Advisor will have opportunity to ask the other party and any witnesses relevant questions and follow-up questions, including questions challenging credibility of the other party or any witness. Cross-examinations must be conducted orally by the party's Advisor. The Advisors only have the ability to cross-examine witnesses and parties. Parties do not have the ability to cross-examine the other party or witnesses, but can present questions through their Advisor.
9. Only relevant cross-examination or other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a question asked by the other party's Advisor, the Procedural Facilitator will determine whether the question is relevant. If the Procedural Facilitator deems the question not to be relevant, they must explain to the party's Advisor asking the question why it is not relevant. For example, questions and

evidence regarding a party or witnesses' prior sexual behavior or history is irrelevant, unless offered to prove that someone other than the Respondent committed the alleged 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. **Rules of evidence used in courts of law are not used in this process.**

10. Upon completion of the witness testimony and all information pertinent to the situation, the Administrative Educational Conduct Review Officers will indicate if a witness needs to be recalled for further questioning.
11. If no further questioning is needed, the Complainant and Respondent provide a closing statement verbally and/or in writing.
12. At the conclusion of the Administrative Educational Conduct Review, Administrative Educational Conduct Review Officers adjourn the Administrative Educational Conduct Review and dismiss the witnesses, the parties, and their Advisors. The Administrative Educational Conduct Review Officers will meet in closed session to deliberate, with or without the Procedural Facilitator. The Complainant and Respondent and Advisors are not permitted to hear the Administrative Educational Conduct Review Officers' deliberations.

E. Notice of Decision

The Administrative Educational Conduct Review Officers will notify the Complainant and Respondent, in writing of the decision (and sanctions, if any) within five (5) business days of the date of the Administrative Educational Conduct Review.

The Administrative Educational Conduct Review Officers will issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the Respondent, and any remedies to the Complainant. The written determination must be sent electronically to the parties and their Advisors along with information about how to file an appeal.

XI. STUDENT APPEAL OF DECISION

Both parties have the right to appeal a determination of responsibility, or dismissal of a Formal Complaint. Upon receipt of the Administrative Educational Conduct Review Officers' written decision, the Complainant and Respondent shall each have the right to submit a written appeal of the outcome of the Administrative Educational Conduct Review to the Vice President for Student Affairs/Dean of Students, or their designee, within three (3) business days. Complainants and Respondents seeking an appeal must specify the grounds for the request. Complainants and Respondents who fail to file an appropriate written request for an appeal within three (3) business days waive their right to appeal. As this is an Administrative

Educational Conduct Review Process, the University strongly encourages the Complainant and Respondent involved to author their own appeals/responses.

A. Grounds for Appeal

Appeals will be considered only in *one or more* of the following circumstances:

1. When the sanction is inconsistent with the gravity of the offense;
2. When new evidence that was not available at the time of the Administrative Educational Conduct Review becomes available within the above referenced three (3) business day period;
or
3. When Title IX personnel had a conflict of interest or bias, that materially affected the outcome of the matter; or
4. When there has been a substantial and material procedural error during the Administrative Educational Conduct Review Process.

B. Initial Appeal Submission

Complainant Appeal. If Complainant wishes to appeal, they must submit electronically a written statement *not to exceed 1500 words* specifying how the outcome of their Administrative Educational Conduct Review is grounds for appeal. This must be done within three (3) business days of receiving the Administrative Educational Conduct Review Officers' written decision and is submitted to the Vice President for Student Affairs/Dean of Students, or their designee.

Respondent Appeal. If Respondent wishes to appeal, they must submit electronically a written statement *not to exceed 1500 words* specifying how the outcome of their Administrative Educational Conduct Review is grounds for appeal. This must be done within three (3) business days of receiving the Review Officers' written decision and is submitted to the Vice President for Student Affairs/Dean of Students, or their designee.

C. Determining if the Appeal has Grounds

The Vice President for Student Affairs/Dean of Students, or their designee, will review the appeal and determine whether or not the appeal is based on valid grounds. Only those appeals that are based on at least one of the four above-stated grounds for appeal will be reviewed on their merit.

D. The Right for a Response

Right of the Complainant. Once the Respondent has submitted an appeal that the Vice President for Student Affairs/Dean of Students, or their designee, believes has grounds for consideration, the Vice President for Student Affairs/Dean of Students, or their designee, will notify the Complainant of the Respondent's appeal and the grounds for the appeal within three (3) business days. The Complainant is not entitled to view the letter of appeal. The Complainant then has three (3) days to respond electronically to jsteffes@wne.edu with a response letter addressed to the Vice President for Student Affairs/Dean of Students, or designee, *limited to 1,500 words*. Failure to respond within three (3) business days constitutes a waiver of this right.

Right of the Respondent. Once the Complainant has submitted an appeal that the Vice President for Student Affairs/Dean of Students, or their designee, believes has grounds for consideration, the Vice President for Student Affairs/Dean of Students, or their designee, will notify the Respondent of the Complainant's appeal and the grounds for the appeal within three (3) business days. The Respondent is not entitled to view the letter of appeal. The Respondent then has three (3) days to respond electronically to jsteffes@wne.edu with a response statement addressed to the Vice President for Student Affairs/Dean of Students, or their designee, *limited to 1,500 words*. Failure to respond within three (3) business days constitutes a waiver of this right.

E. Decision of Appeal

Only those appeals and response statements that are received electronically, that meet the 1,500-word count limit, and that arrive within the prescribed deadlines will be considered for review.

Upon receipt of a timely, electronically-submitted, written appeal and response from the parties, the Vice President for Student Affairs/Dean of Students, or their designee, shall review the above-noted appeal. The appeal is not a review of the entire case, instead, the appeal is a focused review of the existing record and is limited to the three grounds for appeal. The Vice President for Student Affairs/Dean of Students, or their designee, shall have the power to:

- Affirm the Administrative Educational Conduct Review Officers' decision;
- Reverse the Administrative Educational Conduct Review Officers' decision;
- Modify the sanctions imposed or not imposed; or
- Remand the matter for further investigation and/or consideration by the Administrative Educational Conduct Review Officers (only applicable when there is new evidence, where there is a conflict of interest or bias, and/or there is a substantial and/or material procedural error).

The original decision and sanction will stand if the appeal is not timely, is not transmitted electronically to jsteffes@wne.edu, or is not based on the grounds previously enumerated. The Vice President for Student Affairs/Dean of Students, or their designee, will only review and consider the first 1500 words of any submitted appeal or response statement. After reviewing the written appeal and response statement, the Vice President for Student Affairs/Dean of

Students, or their designee, will deliver a written decision on the appeal to all parties within a reasonable time frame.

The decision of the Vice President for Student Affairs/Dean of Students, or their designee, will be final and binding.

XII: APPEALS FOR EMPLOYEES

A. Notice of Appeal

Respondents and Complainants may appeal by filing written notice with the Assistant Vice President and Director of Human Resources within 10 business days from the day a sanction is or is not imposed. Appeals are limited to 1,500 words and must be submitted electronically. Respondents and Complainants seeking an appeal must specify the grounds for the request. Respondents and Complainants who fail to file an appropriate written request for an appeal 10 business days waive their rights to appeal.

B. Grounds for Appeal

Appeals will be considered only in one or more of the following circumstances:

1. When a Respondent or Complainant deems the sanction inconsistent with the gravity of the offense, except in the case of termination of employment as provided in the Western New England University Faculty handbook where review is automatic;
2. When new evidence that was not available at the time of the Administrative Educational Conduct Review becomes available within the above referenced 10 business day period; or
3. When Title IX personnel had a conflict of interest or bias, that materially affected the outcome of the matter; or
4. When there has been a substantial and material procedural error during the Administrative Educational Conduct Review Process.

C. Appeals Panel

A three-member appeals panel will be designated by the Title IX Coordinator in consultation with the President of the University. Appeal panel members may not include individuals who had previously been involved in the grievance process. The appeal panel will have the authority to:

- Affirm;

- Reverse;
- Modify the sanctions; or
- Remand the matter for further investigation or consideration by the Committee (only available where there is new evidence, conflict of interest or bias, or where there is a substantial and material procedural error).

The original decision and sanction will stand if the appeal is not timely or is not based on the grounds cited above. The appeals panel will issue a written review of their findings to the Assistant Vice President and Director of Human Resources. Then, the Assistant Vice President and Director of Human Resources will deliver a written decision on the appeal to all parties within three (3) business days from the review of the appeals panel. Decisions of the appeals panel are final.

D. Appeals for Tenured Faculty Only

Should any tenured faculty member at the University desire to pursue an appeal of any actions imposed on him/her through these procedures, the affected faculty member will avail himself/herself of procedures delineated in the appropriate faculty handbook.

E. Appeals if Respondent is the President of the University

In the event that the Respondent is the President, the Chairman of the Board of Trustees will receive the report of the Committee and determine, with the Board of Trustees, any sanctions to be imposed in accordance with the Bylaws of Western New England University. The decision of the Board will be final.

XIII. RETALIATION

The University prohibits any act of retaliation against anyone who participated in a Sexual Harassment/Title IX proceeding. Any complaint of retaliation will be investigated thoroughly. Any allegation of retaliation will be adjudicated through the relevant disciplinary process.