Washington and Lee University
Procedures for Complaints against Faculty, Staff, and Other Non-Students
University Policy on Prohibited Discrimination, Harassment, Sexual Misconduct and Retaliation

Any individual ("Complainant") who believes that s/he has been the object of prohibited discrimination, harassment, sexual misconduct, or retaliation by a member of the faculty, staff, or other non-student ("Respondent"), may raise the concern and bring a complaint through these procedures.

Note: The procedures outlined here for complaints of discrimination, harassment, sexual misconduct, or retaliation against faculty, staff, and other non-students pertain to obtaining information or filing a complaint with the University. They are not intended in any way to preclude any criminal or civil remedies that may also be available to a person who has been the object of unlawful discrimination, harassment, sexual misconduct, or retaliation under state or federal law.

1. Definitions of Terms and Acronyms

- **"CO-CHAIRS" =** The Treasurer/Vice-President for Finance and Administration and the Provost (Title IX Coordinator) serve as Co-Chairs of the Investigation and Review Officers ("IROs"). As described fully below, the Co-Chairs receive formal complaints, appoint the Investigator, Review Panel, and Appeal Panel (as needed), notify the parties at various stages in a complaint proceeding, and determine the sanction when a policy violation is found. The Co-Chairs serve as advisors to the IROs on procedural matters.

- **"DPA" =** Discrimination Policy Advisers. The DPAs are a group of 15-20 faculty and staff, representing a cross-section of the campus community. DPAs are peer-nominated, selected by the Co-Chairs, and then invited to serve by the President for three-year staggered terms. DPAs may be invited to serve additional terms without a lapse, but are subject to removal by the President at the request of either Co-Chair. DPAs provide procedural information and options to complainants and respondents regarding complaints by or against faculty, staff or other non-student members of the W&L community under the University Policy on Prohibited Discrimination, Harassment, Sexual Misconduct, and Retaliation. DPAs can also work informally to resolve matters themselves or bring in others to assist with informal resolution.

- **"DPA COORDINATOR"** = The Co-Chairs will appoint one of the DPAs to serve in this role at the beginning of each academic year (a DPA may serve multiple consecutive years in this capacity if agreed). After these procedures have been in place for two years, the DPA Coordinator will be appointed from the group of DPAs who have served at least two years. The DPA Coordinator is responsible for

coordinating training and meetings of the full DPA group, and serves as an adviser to the DPAs on procedural matters related to complaints against faculty, staff, and other non-students. The DPA Coordinator is also responsible for collecting and submitting summary reports to the Co-Chairs on all matters referred to a DPA. The DPA Coordinator may not serve as a DPA for any party to a formal complaint in order that s/he may remain available to advise the DPAs involved in that process on procedural matters.

- **"INVESTIGATION AND REVIEW OFFICERS"** = The group of administrators that make up the pool from which the Co-Chairs draw the Investigator(s), an Investigation and Review Panel (IRP), and (if needed) an Appeal Panel when a formal complaint is filed under these procedures. The IROs consist of the following administrators:
  - **Vice President for Student Affairs and Dean of Students (Assistant Title IX Coordinator for Students)**
  - **Dean of the College**
  - **Dean of the Williams School**
  - **Dean of the School of Law**
  - **Associate Dean of the College (1)**
  - **Associate Deans of the College (2)**
  - **Associate Dean of the Williams School**
  - **Associate Dean for Academic Affairs (Law)**
  - **Assistant Dean for Student Affairs (Law)**
  - **Executive Director of Human Resources (Assistant Title IX Coordinator for Employment)**
  - **Chief Technology Officer**
  - **Director of Athletics**
  - **Executive Director of University Facilities**

2. Initial Contact

a) Faculty/Staff Complainant

To raise a concern, a faculty or staff Complainant may contact any of the following: 1) a Discrimination Policy Adviser ("DPA") (*go.wlu.edu/OGC/ResourcesContactInfo)* ; 2) his/her supervisor; 3) any Dean or Associate/Assistant Dean; 4) a Human Resources staff member; or 5) the Assistant Title IX Coordinator for Employment.

b) Student Complainant

A student Complainant may contact any of the following: 1) a Discrimination Policy Adviser ("DPA" (*go.wlu.edu/OGC/ResourcesContactInfo*); 2) a Student Affairs Resource specifically designated in the Resources Contact Guide for this Policy (*go.wlu.edu/OGC/ResourcesContactInfo)* ; 3) another Student Affairs resource (*e.g.* Student Health and Counseling Services, Public Safety, or

Residence Life Staff); 4) any Dean or Associate/Assistant Dean; or 5) the Assistant Title IX Coordinator for Students or the Assistant Title IX Coordinator for Employment. If the student Complainant chooses to contact a Student Affairs resource, or a Dean or Associate/Assistant Dean, that resource will work with the student to access a DPA.

c) Others

Anyone may contact a Discrimination Policy Adviser ("DPA") to raise a concern on their own behalf or on behalf of someone else.

3. Informal Resolution

a) DPAs

DPAs may informally resolve concerns themselves or may bring in others (with consent of the parties) as appropriate to assist with resolution. A DPA may alternatively refer the matter to a supervisor, Dean, Human Resources representative or the Assistant Title IX Coordinator for Employment for informal resolution if the Complainant does not wish to pursue a formal complaint. Once a matter has been informally resolved, referred, or the complainant decides to pursue a formal complaint, the DPA submits a written summary report to the DPA Coordinator, who then forwards to the Assistant Title IX Coordinator for review.

b) Human Resources Office

A Human Resources staff member may informally resolve concerns or may bring in others (with consent of the parties) as appropriate to assist with resolution. A Human Resources staff member may alternatively refer a complainant to a DPA, a supervisor or Dean, or the Assistant Title IX Coordinator for Employment for informal resolution if the Complainant does not wish to pursue a formal complaint. Once a matter has been informally resolved, referred, or the complainant decides to pursue a formal complaint, the Human Resources staff member then contacts the DPA Coordinator to prepare a summary report, which is reviewed by the Assistant Title IX Coordinator for Employment. If no DPA has been involved in the informal resolution, the Assistant Title IX Coordinator will oversee the preparation of a summary report.

c) Role of Supervisors/Deans

A staff supervisor or Dean (in his/her role as faculty supervisor) may attempt to informally resolve concerns or may bring in others (with consent of the parties) as appropriate to assist with resolution. A supervisor or Dean may alternatively refer a Complainant to a DPA, a Human Resources representative, or the Assistant Title IX Coordinator for Employment for informal resolution if the

Complainant does not wish to pursue a formal complaint. Once a matter has been informally resolved, referred, or the complainant decides to pursue a formal complaint, the supervisor or Dean then contacts the DPA Coordinator to prepare a summary report. If no DPA has been involved in the informal resolution, the Assistant Title IX Coordinator will oversee the preparation of a summary report.

(d) *Role of Assistant Title IX Coordinator for Employment*
The Executive Director of Human Resources, in his/her role as Assistant Title IX Coordinator for Employment, may assist in the informal resolution of complaints when contacted directly by a complainant, or when a matter is referred to him/her. When no DPA has been involved in attempts to informally resolve a complaint, the Assistant Title IX Coordinator for Employment will see that a summary report of the resolution efforts is prepared.

4. Formal Complaint

(Note: all time frames referenced in these formal complaint procedures are subject to extension by the appropriate Co-Chair for good reason.)

a) *Initiation of Formal Complaint*
A formal complaint should be initiated through a DPA and should be brought forward promptly to allow the most effective investigation. A Complainant – or any other concerned individual wishing to bring a formal complaint – may contact a DPA directly, or may be referred to a DPA by a supervisor/Dean (or Associate/Assistant Dean)/Human Resources representative, or other Student Affairs resource (in the case of a student Complainant). The complaint should be brought by submitting a signed writing to a DPA, who should then contact the DPA Coordinator to advise that the complaint is being initiated formally. The DPA Coordinator should notify the Assistant Title IX Coordinator for Employment that a formal complaint is being initiated.

b) *Submission of Complaint / Notification to Respondent*
The DPA submits the formal complaint, along with any questions about the process or concerns about the need for interim measures during the investigation and review of the complaint (see section 10), to the appropriate IRO Co-Chair (Provost if the Respondent is a faculty member; Treasurer/Vice President for Finance and Administration if the Respondent is a staff member) – except as noted below in subsections 4(d) and (e). The DPA Coordinator or Assistant Title IX Coordinator for Employment should submit a copy of the summary report, if any, outlining prior handling of the complaint through informal channels, to the Co-Chair, to be included with the record.

The appropriate Co-Chair will then promptly (within five (5) business days after

being provided the complaint, if practicable) notify the Respondent that a formal complaint has been initiated and, if not done at the same time, make arrangements to meet with the Respondent to provide the Respondent with a verbal summary of the complaint and outline the complaint process. The Co-Chair will advise the Respondent of the University's non-retaliation policy, and will inform the Respondent of his/her right to choose a DPA and to submit to the Investigator, if desired, a written statement regarding the complaint to be made a part of the record. If the Respondent chooses to submit a written statement, s/he should do so within five (5) business days after being given a verbal summary of the complaint.

c) *Preliminary Actions by Co-Chair*
The appropriate Co-Chair will promptly appoint an IRO to serve as the Investigator. In some cases, the Co-Chair may appoint a team of two Investigators as s/he deems appropriate. The Co-Chair will then make a preliminary selection of three IROs to serve as the members of the three-person Investigation and Review Panel. If an IRO is the Respondent or the Complainant, the process operates as usual, with that IRO not being involved in any capacity other than as a party.

d) *Complaint by or against an IRO Co-Chair*
If one of the Co-Chairs is the Respondent or Complainant, the President will serve in the role of that Co-Chair and the process will operate as usual. In this situation, any appeal would go to the Chair of the Audit Subcommittee of the Finance Committee of the Board of Trustees ("Audit Subcommittee").

e) *Complaint against the President and/or a Trustee*
If the Respondent is the President or a member of the Board of Trustees, the complaint is filed directly with the Audit Subcommittee by delivery of a sealed written complaint to the Secretary of the University, Washington Hall 203, labeled "Complaint to the Audit Subcommittee under the University Policy on Prohibited Discrimination, Harassment, Sexual Misconduct, and Retaliation." The Secretary of the Board will deliver the sealed written complaint intact to the Chair of the Audit Subcommittee and the Audit Subcommittee will handle or direct all further proceedings.

f) *Involvement of Assistant Title IX Coordinator for Employment in Formal Complaints*
The Assistant Title IX Coordinator for Employment is available to act as a resource to the Co-Chairs, the Investigator, the DPAs, or the parties to a formal complaint, in order to address issues that arise during the complaint process. In the event that the Assistant Title IX Coordinator for Employment has had a substantive role in informal complaint resolution efforts prior to the initiation of

the formal complaint, or acts as a resource beyond the resolution of purely procedural questions during the formal complaint process, s/he will not serve on any Investigation Review Panel or Appeal Panel in that case thereafter.

5. Investigation

The investigation is conducted solely by the appointed Investigator(s), who will interview the parties and other witnesses as necessary. A party's DPA may sit with her/him during an interview if requested by the party as a support resource, but may not participate in the interview. The Investigator(s) will inform the parties and witnesses of the requirement of ongoing confidentiality regarding the matter being investigated and the University's policy prohibiting retaliation against any person involved in a complaint process. In most cases, absent unusual circumstances, the investigation should be completed within thirty (30) business days after the Investigator receives the complaint.

6. Withdrawal of Complaint; Review of Parties' Proposed Resolution

(a) Withdrawal of Complaint

At any time during a formal complaint process, the Complainant may request of the Co-Chair to withdraw his/her formal complaint. Before approving a withdrawal of the complaint, the Co-Chair will meet with the Complainant and his/her DPA, if desired, to discuss the request. The Co-Chair retains the discretion to reject the request for withdrawal and to proceed with the formal process, with or without the further participation of the Complainant, if s/he believes it prudent and appropriate to do so in the best interest of the university community, based on all relevant information.

(b) *Review of Parties' Proposed Resolution*

If, after the initiation of a formal complaint but before the issuance of the investigative report, the Respondent acknowledges inappropriate conduct and proposes a resolution/sanction agreeable to the Complainant, an IRP will be appointed to review the conduct acknowledged and the proposed resolution/sanction. If the IRP finds the resolution/ sanction reasonable, it will be recommended and sent to the appropriate Co-Chair for implementation. If the IRP finds the proposed resolution/sanction unreasonable given the nature and circumstances of the conduct acknowledged or alleged, it may reject the proposed resolution/sanction and conduct a normal IRP review after issuance of the investigative report.

7. Investigative Report; Party Responses; IRP Appointment

a) Investigative Report

Upon conclusion of the investigation, the Investigator(s) will prepare and submit to the appropriate Co-Chair a written investigative report, reaching an assessment on whether it is more likely than not that the facts present conduct that would constitute a violation of the University Policy on Discrimination, Harassment, Sexual Misconduct, and Retaliation or other university policies. The Complainant and Respondent will each be provided with a redacted version of the report (to remove witness names and personally identifiable witness statements), not to be copied or distributed, but which the party may share with his/her DPA.

b) *Party Responses to Investigative Report*
The parties will each have five (5) business days from the day of their receipt of the investigative report to prepare and submit a written response to the appropriate Co-Chair for the record.

c) *IRP Appointment*
The appropriate Co-Chair will then promptly notify the parties of which IROs have been selected to make up the Investigation and Review Panel (IRP) and will designate one of them as IRP Chair. The parties must submit any concerns about the IRP composition to the Co-Chair in writing within one (1) business day of receipt of notice. The Co-Chair may follow-up with the parties and/or IRP members regarding any stated concerns, as needed. The Co-Chair will notify the parties and IRP members of any change to the composition of the IRP if the Co-Chair concludes that one or more of the designated IRP members should not serve on that panel. *Note: see section 4(f) above regarding participation of Executive Director of Human Resources/Assistant Title IX Coordinator for Employment when s/he has had any substantive role in efforts to informally resolve the complaint or the formal complaint process.*

8. IRP Review

The IRP will review the investigative report and the related record regardless of whether the Investigator(s) concluded a violation occurred. In most cases, absent unusual circumstances, the IRP review should be completed within ten (10) business days of the date the IRP members receive the record from the Co-Chair.

If the IRP has any questions, it may meet with the Investigator(s) in person and/or may request that the parties separately meet with the IRP. If the IRP finds that any other follow-up is needed with witnesses, the Investigator(s) will conduct the follow-up and submit an addendum to the written investigative report, which will be sent to the IRP. In such instances, the parties will be given an opportunity to view a redacted version of the addendum, consistent with the parties' opportunity to review the original investigative report (see subsection 7(a)).

Once the IRP has determined that it has sufficient information to make a decision, it will discuss the matter outside the presence of the Investigator(s) and the parties. The IRP will then reach a decision on whether it is more likely than not that university policy was violated, and (if so) will make a written recommendation of sanctions to the appropriate Co-Chair (see format of IRP report in Section 9 below). The IRP may make recommendations to the Co-Chair for appropriate follow-up actions (including training, counseling, or other educational opportunities) in the absence of a finding of a policy violation.

9. Co-Chair Notifies Parties of Final Decision and Sanction

The IRP's decision about whether university policy was violated is binding on the Co-Chair, but subject to appeal by either party. However, the Co-Chair has the discretion to determine the final sanction if the IRP has found a policy violation or to impose follow up actions in the absence of a policy violation. If the individual found to have violated university policy is a faculty member and the Co-Chair concurs with an IRP sanction recommendation of termination, the case will proceed in accordance with the "for cause" dismissal proceedings set forth in the Faculty Handbook where applicable. In such a case, the Co-Chair (Provost) is ineligible to serve as the President's designee under the "for cause" dismissal process.

The Co-Chair will meet promptly and separately with each party (and his/her DPA, if applicable and desired by the party) to notify the parties of the outcome, review the ongoing confidentiality obligations, the prohibition against retaliation, and the appeals process. If practicable, these meetings should be scheduled within five (5) business days of the Co-Chair's receipt of the IRP report. In the meetings, the Co-Chair will provide the two page IRP report in the following manner: the first page (which contains the findings on the allegations of a policy violation) will be provided to each party; the second page (which contains the IRP-recommended sanction(s) or follow up actions and the Co-Chair's decision on sanction(s) or follow up actions) will be provided solely to the Respondent, unless the sanctions or follow up actions are such that they directly involve the Complainant (*e.g.* a "no contact" requirement) or where required by federal law to be disclosed to the Complainant in the case of certain criminal sexual offenses covered by the Campus Security Act.

The DPA will promptly schedule a follow up meeting with his/her party to discuss the process and answer any questions the party may have.

If, through informal resolution or Co-Chair decision upon a finding of no violation, a Respondent has been advised to receive training, counseling, or some other professional development, or to take some other follow up action(s), the Co-Chair will oversee fulfillment of this obligation, though s/he may delegate coordination of the details to Respondent's supervisor. If a Respondent has been sanctioned for a violation, the

appropriate Co-Chair will oversee fulfillment of the sanction.

10. Appeals Process

Either the Complainant or Respondent may appeal a finding of a policy violation/non-violation and/or a sanction/follow up action of which s/he has been informed. Appeals must be in writing, specifying in detail the basis for the appeal, and must be filed with the Co-Chair who issued the original decision within five (5) business days of receipt of that decision. An Appeal Panel (comprised of three IROs who were not involved in the original investigation or panel) will be appointed by the other Co-Chair (who was not involved in the original review or sanctioning process). The appeal review will then be conducted as soon as possible. In most cases, absent unusual circumstances, the Appeal Panel review should be completed within ten (10) business days of the date the panel members receive the record from the Co-Chair.

The Appeal Panel will not substitute its judgment for the IRP or Co-Chair if it finds there was a reasonable basis for appealed aspects of the decision. In making such a determination, the Appeal Panel may speak with the Investigator(s), the appropriate Co-Chair, or the parties as the Appeal Panel deems necessary.

If the Appeal Panel fully affirms a "no-violation" finding made by the IRP with or without recommended follow up actions, or affirms a finding of a violation and/or the sanction, the Appeal Panel will issue a brief written decision to that effect using part one of the Appeal Panel Report and submit it to the Co-Chair who issued the original decision, who will then meet promptly with each party (and his/her DPA, if applicable and desired by the party) to advise of the Appeal Panel's decision, which is final. If practicable, these meetings should be scheduled within five (5) business days of the Co-Chair's receipt of the Appeal Panel Report.

- If the Appeal Panel affirms a "no-violation" finding made by the IRP, but does not affirm recommended follow up actions (or absence of such actions), the Appeal Panel will explain the facts and analysis supporting its findings and recommendations in part two of the Appeal Panel Report. The Co-Chair issuing the original decision will then review the recommendations regarding any follow up actions and issue the final decision on such measures. The Co-Chair will then meet promptly with each party separately (and his/her DPA, if applicable and desired by the party) to advise of the Appeal Panel's decision. If practicable, these meetings should be scheduled within five (5) business days of the Co-Chair's receipt of the Appeal Panel Report. The Co-Chair will advise only the Respondent on the decision regarding follow up actions and share part two of the Appeal Panel Report only with the respondent, except for any part of such actions that directly involve(s) the Complainant or unless required by federal law to be disclosed to the Complainant in the case of certain criminal sexual offenses covered by the Campus Security Act. The Co-Chair's decision on such follow up actions is final.

If the Appeal Panel overturns a "no-violation" finding, the matter is sent back to the appropriate Co-Chair for the original review proceeding, who will then make a decision on the sanction and meet promptly with the parties (and their DPAs, if applicable, and desired by the party) to share the two-part Appeal Panel Report. If practicable, these meetings should be scheduled within five (5) business days of the Co-Chair's receipt of the Appeal Panel Report. The first part (which contains the basis for the overturning of the "no-violation" finding) will be provided to both parties; the second part (which contains the Co-Chair's decision on sanction) will be provided only to the Respondent, unless some part of the sanction directly involves the Complainant or unless required by federal law to be disclosed to the Complainant in the case of certain criminal sexual offenses covered by the Campus Security Act. The Co-Chair's decision on sanction is appealable by Respondent within five (5) business days of receipt of the sanction decision. Such an appeal must be in writing, filed with the Co-Chair who issued the decision, and must specify in detail the basis for the appeal.

If the Appeal Panel concurs with a violation finding but finds a sanction is without reasonable basis, the Appeal Panel should first consult the appropriate Co-Chair to review the sanction. If no consensus decision can be reached, both the Appeal Panel and the appropriate Co-Chair will submit their separate recommendations in writing to the President, who will make the final determination by accepting one of the two recommendations and signing off on that recommended sanction. Thereafter, the Co-Chair will meet promptly with the Respondent (and his/her DPA, if applicable and desired by the party) to advise him/her of the President's decision on sanction and will also advise the Complainant when the sanction involves the Complainant or when required by federal law in the case of certain criminal sexual offenses covered by the Campus Security Act. If practicable, these meetings should be scheduled within five (5) business days from the Co-Chair's receipt of the President's decision. The President's decision on sanction is final.

If the Appeal Panel overturns a violation finding, the matter is sent back to the appropriate Co-Chair for the original review proceeding, who will then remove the sanction(s) issued, decide any appropriate follow up action(s), and meet promptly with the parties (and their DPAs, if applicable, and desired by the party) to share the two-part Appeal Panel decision. If practicable, these meetings should be scheduled within five (5) business days from the Co-Chair's receipt of the Appeal Panel Report. The first part (which contains the basis for the overturning of the violation finding) will be provided to both parties; the second part (which contains the Co-Chair's removal of sanction and

decision on any follow up actions) will be provided only to the Respondent, unless some part of the sanction directly involves the Complainant or unless required by federal law to be disclosed to the Complainant in the case of certain criminal sexual offenses covered by the Campus Security Act.

11. Interim Measures

The appropriate Co-Chair may take such interim measures as s/he deems advisable in a given case, including, but not limited to, a no-contact directive between the parties at any point in a complaint process. Further, if, at any point in a complaint process, the Co-Chair believes that the respondent represents a danger to individuals or a disruption to campus operations, the respondent may be placed on administrative leave with pay pending the outcome of the complaint and appeals process.

12. Confidentiality and Recordkeeping

The facts about individual cases and their dispositions are to remain confidential to the extent possible. In order to protect the privacy of all involved and to promote the effectiveness and credibility of these procedures, no one involved in a complaint process should discuss any information regarding the case except with those who have a legitimate need to know. Any member of the campus community who violates the confidentiality provisions of these procedures, and/or the confidentiality directives of the administrators handling complaints, will be subject to discipline.

The Co-Chairs, DPA Coordinator, and the Assistant Title IX Coordinator for Employment will maintain the official written records of formal and informal complaints and resolutions under these procedures in accordance with applicable University record retention schedules. All other working materials and notes created or referred to during the course of a complaint by the individuals handling or participating in the complaint process should be shredded at the end of the complaint process. The DPA Coordinator or the Assistant Title IX Coordinator for Employment (in the case of an informal complaint) or the appropriate Co-Chair (in the case of a formal complaint) will advise all those involved when the records may be shredded.

Adopted: August 2009
Revised: August 2010
Revised: August 2011
Revised: August 2012
Revised: August 2013