

SEXUAL MISCONDUCT - TITLE IX  
FEBRUARY 2023

Title IX Policy for Complaints of Sexual Harassment and Sexual Discrimination

Contents

- I. Purpose..... 1
- II. Scope..... 2
- III. Definitions..... 3
- IV. Immediate Actions a Person Should Take..... 10
- V. Reporting Sexual Discrimination and Harassment..... 10
- VI. Confidentiality..... 13
- VII. Investigation ..... 14
- VIII. Investigation Report..... 20
- IX. Live Hearing Procedures..... 21
- X. Appeal of Decision..... 23
- XI. Withdrawal of a Complaint..... 23
- XII. False Reports..... 24
- XIII. Retaliation..... 24
- XIV. Relationships between Individuals of Different University Status..... 25
- XV. Timeframe for Completion of Investigation and Disciplinary Process..... 25
- XVI. Education and Prevention Programs..... 26
- XVII. Assistance...Rights and Options..... 26
- XVIII. Resources for Parties Involved..... 27
- XIX. Flow Chart..... 29

I. Purpose

This policy is adopted by Cumberland University specifically to address discrimination and harassment based on sex, as well as the following offenses defined herein: Dating Violence, Domestic Violence, Sexual Assault, and Stalking; and, to establish procedures for responding to incidents of Sexual Discrimination and Harassment. Sexual Harassment is a form of sexual discrimination prohibited by Title IX of the Education Amendments of 1972 and Cumberland University.

The University is committed to eliminating any and all acts of Sexual Discrimination and Sexual Harassment on its campus. An environment free from such acts is necessary to a healthy learning, working, and living atmosphere. Any allegation of Sexual Discrimination or Sexual Harassment, as defined herein, will be investigated and resolved according to this policy. Cumberland will take appropriate steps, as needed, to prevent the recurrence of Sexual Discrimination or Sexual Harassment and to remedy any discriminatory effects.

If government laws or regulations change, or court decisions alter, the requirements in a way that impacts this policy, this policy will be construed to comply with the most recent government regulations.

## II. Scope

### A. These procedures shall be utilized by:

1. Any employee or student, including applicants for employment or admission as a student, who has been a victim of Sexual Discrimination and/or Harassment, regardless of sexual orientation or gender identity/expression during the person's participation in or attempt to participate in the educational program(s) or activities of Cumberland University in the United States;
2. Any former employee or student who has been a victim of Sexual Discrimination and/or Harassment, if the conduct took place within the United States during the time of employment or enrollment at Cumberland, and the conduct has a reasonable connection to the institution;
3. Any person, including parents or guardians, who has knowledge of an act of Sexual Discrimination and/or Harassment against another employee or student in order to report such conduct; and,
4. All third parties with whom Cumberland University has an educational or business relationship who have been a victim of Sexual Discrimination and/or Harassment when the conduct has a reasonable connection to the institution.

B. This policy applies to all University programs and activities, including, but not limited to, Sexual Discrimination and Sexual Harassment in athletics, instruction, grading, University housing, and University employment. This policy applies to alleged violations that occur in the United States in locations, events, or circumstances over which the University exercised, at the time of the alleged incident, substantial control over both the Respondent and the context in which the Sexual Harassment occurs, including any building owned, leased, or controlled by the University or by a student organization that is officially recognized by the University.

C. This policy allows the consolidation of Formal Complaints arising out of the same factual circumstances in instances where there is more than one Complainant or Respondent, or where a cross-complaint has been filed by a Respondent against a Complainant.

When Complainants choose to consolidate Formal Complaints, a single investigatory and adjudicatory process will be used where it arises from the same incident and parties. In such cases, each party would independently and simultaneously receive notification and information. In consolidated complaints, the University will issue a single investigative report.

All parties to a consolidated complaint will also receive the same written determination of responsibility when the allegations arise out of the same facts or circumstances, although the determination of responsibility may be different with respect to each allegation depending on the facts. The written determination will be provided simultaneously to the parties and may not be redacted.

D. It is central to the values of this University that any individual who believes he/she may have been the target of unlawful Sexual Discrimination or Sexual Harassment feel free to report his/her concerns for appropriate investigation and response, without fear of retaliation or retribution. The law prohibits retaliation against an individual for:

1. Opposing any practices forbidden under this policy;
2. For bringing a complaint of Sexual Discrimination or Sexual Harassment;
3. For assisting someone with such a complaint;
4. For attempting to stop such conduct;
5. For participating in any manner in an investigation or resolution of a complaint of Sexual Discrimination or Sexual Harassment.

E. This policy shall not be construed or applied to restrict academic freedom, nor shall it be construed to restrict constitutionally protected expression, even though such expression may be offensive, unpleasant, or even hateful.

F. There is no time limit or statute of limitations on a Complainant's decision to file a formal Title IX Complaint with the University.

G. All other forms of discrimination are also strictly prohibited and are subject to the procedures described in the University's Anti-Discrimination Policy:

Cumberland University does not discriminate on the basis of race, sex, creed, color, religion, sexual orientation, gender identity/expression, genetic information, ethnic or national origin, age, disability or veteran status or any other classification protected by Federal, or State constitutional or statutory law in provision of education opportunities or employment opportunities and benefits, pursuant to the requirements of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. 2000D; Title IX of the Education Amendments of 1972, Pub. L. 92-318; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990, Pub. L. 101-336; the Age Discrimination in Employment Act of 1967 (Pub. L. 90-202) (ADEA); and the Age Discrimination Act of 1975, 42 USC 6101, et. seq. This policy extends to employment by and admission to the University as well as the terms and conditions of matriculation. Inquiries or complaints involving alleged unlawful or prohibited discrimination on the basis of race, sex, creed, color, religion, sexual orientation, gender identity/expression, genetic information, ethnic or national origin, age, disability or veteran status or any other classification protected by Federal, or State constitutional or statutory law must be in writing and directed to William R. Richardson, Designated University Coordinator, Executive Director of Community Relations & External Affairs, Memorial Hall #101C, Cumberland University, 1 Cumberland Square, Lebanon, TN 37087, 615-547-1257 (with a copy to the Disability Coordinator if the complaint involves accommodation for a disability). In the event that the conduct involves the Designated University Coordinator for any matter involving prohibited discrimination under this policy, the inquiry or complaint must be in writing and directed to the University's General Counsel Dr. Mark Hanshaw, Memorial Hall #102, Cumberland University, 1 Cumberland Square, Lebanon, TN 37087, 615-547-1224. Inquiries or complaints to the University's General Counsel shall involve an initial complaint against the listed individuals and not an appeal of one of their decisions. The University's General Counsel does not hear appeals of any decision involving unlawful or prohibited discrimination.

### III. Definitions

A. Accuser/Accused and Complainant/Respondent. The alleged victim of conduct prohibited by this policy, often known as an "accuser," will be referred to as the "Complainant" during the process set forth herein. The "accused" party, reported to be the perpetrator of conduct prohibited by this policy, will be referred to as the "Respondent" during this process. The University will treat a person as a Complainant any time the University has notice that the person is alleged to be the victim of conduct that could constitute Sexual Discrimination and/or Harassment (regardless of whether the person themselves reported, or a third party reported the Sexual Discrimination and/or Harassment), and irrespective of whether the Complainant ever chooses to file a Formal Complaint. All Complainants will be offered Supportive Measures.

B. Advisor. Complainants and Respondents are entitled to be accompanied and assisted by one Advisor of their choosing at any meetings or investigation interviews. Advisors are required for hearings. Complainants and Respondents may choose any person to serve as their Advisor, but accommodations, including scheduling of interviews or hearings will not be made for any advisers, including parents, guardians, or attorneys, if they unduly delay the process. No training or qualification is necessary for a person to serve as an Advisor. 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 investigators of the identity of their Advisor at least 1 business day 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 investigators if they change Advisors at any time. If a party does

not have an Advisor present at the live hearing, the University will provide an appropriate Advisor, free of charge to the party.

1. In Interviews and Investigations: Advisors may not participate in the process or speak on behalf of the Complainant or Respondent during interviews, although they may ask to suspend any meetings or interviews briefly to provide consultation. Advisors are expected to refrain from interference with the University's investigation and resolution. Any Advisor who steps out of their role will be warned once and only once. Advisors disrupting the interview will be asked to leave. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the Advisor will be asked to leave the meeting. When an Advisor is removed from a meeting, that meeting will typically continue without the Advisor present. Subsequently, the Title IX Coordinator will determine whether the Advisor may be reinstated or replaced by a different Advisor.
2. In Live Hearings: Advisors may ask either party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's Advisor of choice and never by a party personally. Only relevant cross-examination and other questions may be asked of a party or witness. (See Section IX. F.)

C. Amnesty. A policy that generally protects help-seeking behavior, including participation in Title IX investigations.

D. Coercion. The attempt to exert power or control over another person by use of force, pressure, manipulation, threats, or intimidation in an effort to compel participation in sexual activity. Determinations regarding whether actions or statements amount to Coercion will be made on a case-by-case basis. For example, repeated advances or requests to engage in sexual activity may amount to Coercion depending on all of the relevant facts and circumstances.

E. Consent. The positive, unambiguous, and voluntary agreement to engage in specific sexual activity throughout a sexual encounter. Consent must be an informed decision, freely given made through mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. A clear "yes," verbal or otherwise, is necessary.

When "no" to a form of sexual activity is communicated by word or action, that sexual activity must cease immediately. Repeated requests to engage in a form of sexual activity may amount to Coercion. However, there is no requirement that a person express non-Consent, i.e. someone might not Consent to sexual activity even though they do not say "no" or physically resist. As such, Consent cannot be inferred merely from the absence of a "no." Some behaviors and statements do not indicate Consent, including the following:

- "I don't know."
- "Maybe."
- Without more, ambiguous responses such as "uh huh" or "mm hmm"
- A verbal "no," even if it may sound indecisive or insincere.
- Moving away.

Consent to some sexual acts does not constitute Consent to others, nor does past Consent to a given act constitute present or future Consent. Consent must be ongoing throughout a sexual encounter and can be revoked by any participant at any time.

Consent cannot be given by an individual who is asleep, unconscious, or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason. Engaging in sexual activity with a person whom you know—or reasonably should know—to be incapacitated constitutes Sexual Harassment. Effective Consent is deemed withdrawn at any point during sexual activity when an individual knows or reasonably should know that

the other person has become or is Incapacitated. Consent cannot be obtained by Coercion, including threat or force. Agreement under such circumstances does not constitute Consent.

The University recognizes that there are a wide variety of sexual interactions, that there is no single way to communicate Consent, and that context matters. When evaluating whether sexual activity was consensual, the University will consider the entirety of the sexual interaction and the relevant circumstances. A factor that may be considered when evaluating Consent is whether, under similar circumstances as the person initiating the sexual activity, a sober reasonable person would have concluded that there was effective Consent. Previous sexual relationships of the Complainant and the Respondent with others are generally irrelevant to the existence of effective Consent, but a previous, current, and/or subsequent sexual relationship between the Complainant and the Respondent may or may not be relevant to demonstrating or establishing, depending on the facts and circumstances, whether effective Consent was sought or obtained. Relevancy of a previous, current, and/or subsequent sexual relationship between the Complainant and Respondent or others will be evaluated on a case by-case basis.

F. Dating Violence. Violence against a person when the accuser and accused are dating, or who have dated, or who have or had a sexual relationship. "Dating" and "dated" do not include fraternization between two individuals solely in a business or non-romantic social context, but includes social relationships of a romantic or intimate nature as determined by the length and type of relationship and the frequency of interactions between the persons in the relationship.<sup>2</sup> Violence includes, but is not necessarily limited to:

1. Inflicting, or attempting to inflict, physical injury on the accuser by other than accidental means;
2. Placing the accuser in fear of physical harm;
3. Physical restraint;
4. Malicious damage to the personal property of the accuser, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by the accuser; or,
5. Placing the accuser in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser.

G. Domestic Violence. Felony or misdemeanor crimes of violence committed under the following conditions:

1. Violence against a person when the accuser and accused:
  - a. Are current or former spouses;
  - b. Live or have lived together as a spouse or intimate partner;
  - c. Are related by blood or adoption;
  - d. Are related or were formally, or similarly situated to being, related by marriage;
  - e. Are adult or minor children of a person in a relationship described above; or
  - f. Shares a child in common.
2. Violence includes, but is not necessarily limited to:
  - a. Inflicting, or attempting to inflict, physical injury on the accuser by other than accidental means;
  - b. Placing the accuser in fear of physical harm;
  - c. Physical restraint;
  - d. Malicious damage to the personal property of the accuser, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by the accuser; or,
  - e. Placing the accuser in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser.

H. Formal Complaint. Information provided to the Title IX Office or to a Responsible Employee regarding an incident of Sexual Discrimination or Sexual Harassment, whether provided by the Complainant or a third party, along with a request that the University investigate the allegation.

I. Fondling. The 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 his/her age or because of his/her temporary or permanent Incapacity.

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

K. Intoxication. A state of stupefaction, exhilaration or euphoria resulting from the ingestion of alcohol or other chemical substances.

L. Incapacitation. The inability to make or carry out a rational, reasonable decision. An Incapacitated person lacks the ability to actively agree to sexual activity because the person is asleep, unconscious, under the influence of alcohol or other drugs such that the person does not have control over their body, is unaware that sexual activity is occurring, or their mental, physical or developmental abilities render them incapable of making rational informed decisions. Incapacitation is not the same as legal Intoxication. A person violates this policy when they engage in sexual activity with a person who is incapacitated and a reasonable person in the same situation would have known that the person is Incapacitated. Incapacitation can result from the voluntary or involuntary use of alcohol, marijuana, or other drugs, including, but not limited to, sedatives or "date-rape" drugs. Evidence of Incapacitation may include, but is not limited to, one or more of the following:

- slurred speech
- bloodshot eyes
- dilated pupils
- the smell of alcohol on the breath
- shaky equilibrium
- unsteady gait
- vomiting
- outrageous or unusual behavior
- unconsciousness
- elevated blood alcohol level
- sleeping
- blacking out (amnesia-like state that may be brought on by drugs, heavy drinking, or Intoxication; blacking out is not necessarily incompatible with the ability to engage in simple or even complex behavior)

M. Preponderance of Evidence. The evidentiary standard used by the University. Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true.

N. Rape. The 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 victim.

O. Relevant. Tending to make a fact more or less likely to be true. Examples of information not deemed relevant include but are not limited to privileged information, including treatment information, unless parties agree to the disclosure of such information, and information regarding a Complainant's sexual predisposition or prior sexual behavior unless they are offered to prove that someone other than the Respondent committed the Sexual Harassment, or if the information concerns specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove Consent.

P. Responsible Employee. An Cumberland University employee who has the duty to report incidents of Sexual Discrimination and/or Sexual Harassment; or, whom a student could reasonably believe has this authority or duty. (See Section V. D. 2.)

Q. Sexual Assault. An offense that meets the definition of Rape, Fondling, Incest or Statutory Rape as used in the FBI's Uniform Crime Reporting system. A sex offense is any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent.

R. Sexual Discrimination. Treating individuals less favorably because of their sex (including pregnancy or sexual orientation/ gender identity/expression) or having a policy or practice that has a disproportionately adverse impact on protected class members.

S. Sexual Harassment. Conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the university conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
3. Sexual Assault (as defined in the Clery Act), Dating Violence, Domestic Violence, or Stalking as defined in the Violence Against Women Act (VAWA).

Sexual Harassment, including Sexual Assault, can involve persons of the same or opposite sex. Sexual Harassment includes harassment based on sexuality, gender non-conformity, stereotypical notions of what is female/feminine versus male/masculine, or a failure to conform to those gender stereotypes. Harassment does not have to include intent to harm, be directed at a specific person or group of people, or involve repeated incidents.

Examples of conduct that might rise to the level of Sexual Harassment include, but are not limited to, the following:

- a. Sexual propositions, invitations, or pressure for sexual activity;
- b. Sexual innuendoes, comments, remarks, or inquiries about a person's clothing, body, activities, or experiences;
- c. Refusing to hire, promote, or grant or deny certain privileges because of acceptance or rejection of sexual advances;
- d. Promising a work-related benefit or a grade in return for sexual favors;
- e. Implied or overt sexual threats;
- f. Suggestive or obscene gestures;
- g. Suggestive or insulting sounds;
- h. Whistling in a suggestive manner;

- i. Humor and jokes about sex that denigrate men or women;
- j. Patting, pinching, and other inappropriate touching;
- k. Unnecessary touching or brushing against the body;
- l. Attempted or actual kissing or Fondling;
- m. Suggestive or inappropriate acts, such as comments, innuendoes, or physical contact based on one's actual or perceived sexual orientation and/or gender identity/expression;
- n. Use in the classroom of sexual jokes, stories, remarks, or images that are in no way or only marginally Relevant to the subject matter of the class;
- o. Suggestive or inappropriate communications, email, notes, letters, or other written materials displaying objects or pictures, which are sexual in nature, that would create hostile or offensive work, living, or educational environments, including comments about an individual's body, comments about an individual's sexual activity, deficiencies, or prowess
- p. Graphic or written statements (including the use of cell phones and the internet), or other conduct that may be physically threatening, harmful, or humiliating in a manner related to sex

T. Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress. Stalking includes any willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the accuser to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Conduct includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable person to suffer emotional distress, and that actually causes the accuser to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

For the purposes of this definition:

*Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker 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. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

U. Statutory Rape. Sexual intercourse with a person who is under the statutory age of Consent (which is 18 in the State of Tennessee).

V. Supportive Measures. Reasonable administrative action that is appropriate to provide equal access to education. Supportive Measures will be offered to every Complainant, regardless of whether a Formal Complaint is filed. The Title IX Coordinator is responsible for implementing the supportive measure(s). Examples include, but are not limited to:

- Restrictions on contact between the parties
- Modifications of work or class schedules
- Changes in work or housing locations
- Providing or assistance with counseling and/or medical services
- Providing academic support services, such as tutoring
- Extensions of time or other course-related adjustments
- Campus escort services



- Increased security and monitoring of certain areas of campus
- Leaves of absence
- Arranging for the Complainant to re-take a course or withdraw from a class. (Withdrawal may have financial aid implications. Students are encouraged to contact Financial Aid prior to withdrawing.)

Supportive Measures may be applied to one, both, or multiple parties involved with considerable attention paid to providing students, faculty, and staff members reasonable educational access pending the outcome of the investigation. Cumberland will not place undue burden on any one party and will seek to make Supportive Measures as equitable as possible.

Student Respondents may be placed on interim suspension or an emergency removal pending the outcome of the investigation under the appropriate circumstances, i.e. after an individualized safety and risk analysis has determined an immediate threat to the physical health or safety of an individual.

In appropriate circumstances and consistent with Human Resource policies, employee Respondents may be placed on administrative leave pending the outcome of the matter.

The University may also issue a “Timely Warning” under the Clery Act.

W. Title IX Coordinator. The Title IX Coordinator is the Cumberland University official responsible for overseeing the University’s response to Sexual Discrimination and Sexual Harassment reports and complaints and for addressing any patterns or systemic problems identified by such reports and complaints. This official oversees and coordinates the University’s programs and training efforts with regard to Sexual Discrimination and Sexual Harassment. The Title IX Coordinator conducts investigations and has the authority to implement all Supportive Measures deemed appropriate. All requests by Complainants for confidentiality should be evaluated by the Title IX Coordinator.

1. The Title IX Coordinator’s responsibilities include, but are not limited to, the following:
  - a. Investigation or oversight of investigations of allegations related to Title IX;
  - b. Coordination and oversight of educational programs including mandatory training for new students and employees and awareness campaigns for current students and employees;
  - c. Coordination with University Security on matters related to allegations of Sexual Discrimination and/or Harassment;
  - d. Coordination and oversight of training for anyone involved in responding to, investigating, or adjudicating Sexual Discrimination and/or Harassment;
  - e. Coordination and oversight of training for employees related to their responsibility when they are aware of Sexual Discrimination and/or Harassment;
  - f. Coordination and oversight of annual training for investigators, decision makers, hearing officers and hearing committee members on the issues related to Sexual Discrimination and/or Harassment and on how to conduct an investigation and hearing process that protects the safety of Complainants and promotes accountability;
  - g. Maintenance of all records of trainings (including attendance records and training materials), case files, investigations, hearings, informal resolutions, and other processes for a minimum of seven (7) years;
  - h. Publish all training materials (actual materials and lists of titles and sources of proprietary materials which are available for viewing for inspection only in the Title IX office by request) on the University’s website; and

i. Attending appropriate training annually on topics related to responding to or investigating allegations of Sexual Discrimination and/or Harassment.

2. The Title IX Coordinator may designate deputies and investigators (designees) to assist in carrying out any of the responsibilities related to implementing this policy.

#### IV. Immediate Actions a Person Should Take

A. In the immediate aftermath of a Sexual Assault, Domestic Violence, Dating Violence or similar event, the most important thing is for the person to get to a safe place.

B. When a feeling of safety has been achieved, the person should seek medical attention, regardless of his/her decision to report the crime to the police. It is very important for the assaulted person to seek medical attention immediately so that she/he can be screened for sexually transmitted diseases/pregnancy/date rape drugs, obtain emergency contraception, and receive treatment for any physical injuries.

1. A person who has experienced Sexual Abuse, including Sexual Assault, has the right to accept or decline any or all parts of a medical exam. However, critical evidence may be lost or missed if not collected or analyzed.
2. Valuable physical evidence can be obtained from the person who has experienced Sexual Abuse and their clothing. The person should make every effort to save anything that might contain the offender's DNA. Therefore, the person should not, when possible:

- Bathe or shower;
- Wash his/her hands;
- Brush his/her teeth;
- Use the restroom;
- Change clothes;
- Comb hair;
- Clean up the area where the incident took place; or
- Move anything the offender may have touched.

C. Even if the person who has experienced Sexual Abuse has not yet decided to report the crime, receiving a forensic medical exam and keeping the evidence safe from damage will improve the chances that the police can access and test the stored evidence at a later date should the person who has experienced Sexual Abuse decide to prosecute.

1. Persons experiencing Sexual Discrimination or Sexual Harassment are encouraged to preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs, or other copies of documents, if they have any that would be useful to investigators.

#### V. Reporting Sexual Discrimination and Harassment

*For flow chart of the reporting, investigation, and hearing process, see Section XIX.*

A. Do not wait to report conduct of concern until the conduct becomes sufficiently serious (i.e., severe, pervasive, or persistent) to create a hostile environment. The Title IX Coordinator can take proactive steps to prevent the conduct from continuing and perhaps escalating, and to protect or otherwise assist the person who has experienced Sexual Harassment. For example, the University can arrange for no-contact orders, counseling, and changes in class schedules, living arrangements, class requirements, and testing schedules as needed. The Title IX Coordinator can also provide expertise and advice to help identify conduct that might be a warning sign of or constitute Sexual Discrimination or Sexual Harassment prohibited by this policy and address any concerns or complaints appropriately.

B. Cumberland University encourages persons who have experienced Sexual Discrimination and Sexual Harassment to talk to somebody about what happened so they can get the support they need and so that the University can respond appropriately. Though Cumberland will keep reports as confidential as possible, it cannot guarantee the confidentiality of every report or complaint. The provisions in *Section VI* detail the confidentiality options available to individuals.

C. A student who experiences Sexual Harassment and who was under the influence of alcohol or drugs during the Sexual Harassment incident should not be reluctant to seek assistance for fear of being sanctioned for his/her improper use of alcohol or drugs. Under the Amnesty policy, the University will generally not pursue disciplinary violations against the person who has experienced Sexual Harassment (or against a witness) for his/her improper use of alcohol or drugs (i.e., underage drinking), if the person who has experienced Sexual Harassment or witness is making a good faith report of Sexual Harassment. (see Section III. C.).

D. Reporting:

1. Confidential Reports: Reports to professional licensed **counselors** (including the Cumberland Counseling Office) or to professional ministers (including the Cumberland University Chaplain) are confidential in every respect, to the extent allowed by law. For example, Tennessee's mandatory reporting law related to abuse of minors, imminent harm to others, or subpoenas for testimony may require disclosure of all information received.
  - a. Professional licensed counselors who provide mental health counseling to CU's campus community are not required to report any information about an incident to the Title IX Coordinator and will not do so without written permission.
  - b. Professional ministers are not required to report any information about an incident to the Title IX Coordinator and will not do so without written permission.
  - c. The above designated personnel can assist the person who has experienced Sexual Harassment in receiving other necessary protection and support, such as victim advocacy and health or mental health services. Written permission from the person who has experienced Sexual Harassment to reveal the minimum information necessary to arrange requested assistance will be obtained prior to disclosure.
2. Private, Not Necessarily Confidential Reports: Reports to a **Responsible Employee** will not be absolutely confidential but will be handled in as confidential a manner as possible.
  - a. When a Complainant tells a Responsible Employee (as defined in *Section III P.*) about an incident of Sexual Discrimination or Sexual Harassment, the Responsible Employee must report to the Title IX Coordinator all relevant details about the alleged Sexual Discrimination or Sexual Harassment. Information reported to a Responsible Employee will be shared only with the Title IX Coordinator.
  - b. A Responsible Employee shall not share information with law enforcement without the Complainant's Consent.

c. Employees in the following list are designated as Responsible Employees:

- (1) Title IX Coordinator and designees;
- (2) President, Provost, Vice Presidents, Executive Directors, Directors, Assistant Directors, and Deans
- (3) Faculty;
- (4) Academic Advisors;
- (5) Advisors for student organizations;
- (6) Resident directors and resident assistants;
- (7) Athletic coaches and trainers;
- (8) University Security Authorities, as required by the Clery Act;
- (9) Director of Safety and Security and any security officers employed in any capacity by the University. All security officers are additionally bound by the Nottingham Act requirements:

Unless the victim of a Sexual Assault does not consent to the reporting of an offense, the Director of Safety and Security shall immediately notify the Lebanon Police Department, or other local departments depending on jurisdiction, if Security is in receipt of a report from the victim alleging that any degree of Rape has occurred on University property. The Director of Safety and Security shall designate one person who shall have the authority and duty to notify the local Police Department in his/her absence. In the case of an alleged Rape, University Security and the local Police Department shall jointly investigate the incident. The local Police Department and University Security shall cooperate in the investigation. If the victim does not consent to the reporting, no member of Cumberland Security shall report the offense to the local law enforcement agency.

d. Before a Complainant reveals any information to a Responsible Employee, the Responsible Employee must ensure that the Complainant understands the Responsible Employee's reporting obligations.

(1) If the Complainant wants to maintain confidentiality, the Responsible Employee must direct the Complainant to confidential resources.

(2) If the Complainant wants to tell the Responsible Employee what happened but also maintain confidentiality, the Responsible Employee must advise the Complainant that the request will be considered, but no guarantee can be given that the University will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the Responsible Employee will also inform the Title IX Coordinator of the Complainant's request for confidentiality.

(3) Responsible Employees will not pressure a Complainant to request confidentiality but will honor and support the Complainant's wishes, including for Cumberland to fully investigate an incident. By the same token, Responsible Employees will not pressure a Complainant to make a full report if the Complainant is not ready to do so.

### 3. Formal Complaints:

To file a Formal Complaint, contact the Title IX Coordinator:

If you have a complaint against a Cumberland University student, faculty, staff, or visitor for Sexual Harassment, Sex Discrimination, or Sexual Assault, you may contact the Title IX Coordinator at any time:  
William R. Richardson

rrichardson@cumberland.edu  
 Memorial Hall #101C  
 615-547-1257

The University shall not share personally identifiable information with law enforcement without the Consent of the person who has experienced Sexual Harassment, or unless the person who has experienced Sexual Harassment has also reported the incident to law enforcement and has confirmed this with the University.

4. Reports Not Considered "Notice" To the University:

a. Public awareness events, candlelight vigils, protests, survivor speak outs, or other forums, including social media and class discussions, in which students disclose incidents of Sexual Discrimination and/or Sexual Harassment are not considered notice to Cumberland of Sexual Discrimination and/or Sexual Harassment for purposes of triggering its obligation to investigate any particular incident(s).

b. Such events may inform the need for campus-wide education and prevention efforts, and Cumberland will provide information about students' Title IX rights at these events.

5. Reporting to the U.S. Department of Education:

U.S. Department of Education  
 Office for Civil Rights  
 61 Forsyth Street, S.W., Suite 19T10  
 Atlanta, GA 30303-8927  
 (404) 974-9406 (phone)  
 (404) 974-9471 (fax)  
 ocr.atlanta@ed.gov

**VI. Confidentiality**

- A. If a Complainant discloses an incident to a Responsible Employee but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the University will weigh that request against its obligation to provide a safe, non-discriminatory environment for all students, including the Complainant.
- B. The Title IX Coordinator will evaluate requests for confidentiality. When weighing a Complainant's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator will consider a range of factors, including the increased risk that the alleged perpetrator will commit additional acts of sexual or other misconduct, such as:
1. Whether there have been other Sexual Discrimination and/or Harassment complaints about the same alleged perpetrator;
  2. Whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of Sexual Discrimination and/or Harassment;
  3. Whether the alleged perpetrator threatened further Sexual Discrimination and/or Harassment or other misconduct against the Complainant or others;
  4. Whether the Sexual Discrimination and/or Harassment was committed by multiple perpetrators;
  5. Whether the Sexual Discrimination and/or Harassment was perpetrated with a weapon;

6. Whether the victim is a minor;
7. Whether Cumberland possesses other means to obtain Relevant evidence of the Sexual Discrimination and/or harassment; or
8. Whether the Complainant's report reveals a pattern of perpetration at a given location or by a particular group.

The presence of one or more of these factors could lead Cumberland to investigate and, if appropriate, pursue disciplinary actions. If none of these factors are present, Cumberland will likely respect the Complainant's request for confidentiality.

- C. If Cumberland honors the request for confidentiality, the Complainant should understand that the University's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator(s) may be limited.
- D. If Cumberland determines that it cannot maintain a Complainant's confidentiality, the Title IX Coordinator will inform the Complainant prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response.
- E. Cumberland will not require a Complainant to participate in any investigation, hearing, or disciplinary proceeding.
- F. Cumberland will generally not contact or discuss claims or investigations with the parents, guardians, attorneys, or other designated Advisors of a Complainant or Respondent without that party's written Consent.
- G. FERPA limits the extent to which the University may disclose personally-identifiable information in student records. Whenever it is necessary to comply with FERPA, the University reserves the right to redact or limit information provided under this policy.

## **VII. Investigation**

### **A. Informal Resolutions:**

With the voluntary, informed, and written Consent of both parties, informal resolution may be attempted at any point prior to reaching a determination of responsibility in cases alleging violations of this policy.

1. Prior to any attempted informal resolution, both parties shall receive a written notice disclosing the allegations, the requirements of the informal resolution process including the preclusion of the parties from resuming a Formal Complaint arising from the same allegations, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
2. The University will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints.
3. The University will not require the parties to participate in informal resolution, and may not offer informal resolution unless a Formal Complaint is filed.

4. All facilitators of informal resolutions will be properly trained.
5. At any time prior to agreeing to a resolution, any party has the right to withdraw from informal resolution and resume the grievance process with respect to the Formal Complaint.
6. The University will not allow an informal resolution process to resolve allegations that an employee sexually harassed a student.

#### B. Complaint:

1. Absent good cause, within 5 business days of the Title IX Coordinator's receipt of a report of Sexual Discrimination or Sexual Harassment, the Title IX Coordinator shall notify the Complainant and request a meeting. The Title IX Coordinator should provide written notice to the Complainant of his/her rights with regard to this process in advance of the interview with sufficient time to prepare for meaningful participation.

2. The Title IX Coordinator shall attempt to get a Formal Complaint from the Complainant.

##### a. Formal Complaint:

A Formal Complaint should include information related to the circumstances giving rise to the complaint, the dates of the alleged occurrences, names of witnesses, a request that the University investigate the allegation, and the Complainant's physical or digital signature. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail.

##### b. In the Absence of a Formal Complaint:

When the Complainant chooses not to provide a Formal Complaint but the Title IX Coordinator determines an investigation to be necessary, the Title IX Coordinator will sign and file a complaint alleging Sexual Discrimination and/or Harassment against a Respondent and requesting that the University investigate the allegation. When a Title IX Coordinator signs a Formal Complaint, such action is not taken on behalf of a Complainant, and the Title IX Coordinator does not become a party. The Title IX Coordinator must comply with requirements to be free from conflicts and bias.

3. Both before and during the pendency of the investigations, the Title IX Coordinator shall consult with the Complainant and Respondent and consider what, if any, Supportive Measures may be necessary. (*See Section III V.*)

4. If the Title IX Coordinator determines that there is a need for an investigation, the Title IX Coordinator shall follow the procedures set forth in this policy to investigate and adjudicate the complaint.

5. All complaints will be documented in a complaint tracking document that includes names when available, regardless of whether an investigation is initiated. This document will be kept confidential by the Title IX Coordinator and information therein will only be shared with appropriate University personnel on a need-to-know basis.

#### C. Evaluating the Need for an Investigation:

1. When the Title IX Coordinator knows or reasonably should know of possible Sexual Harassment, immediate and appropriate steps must be taken to investigate or otherwise determine what occurred.

2. When a Complainant requests that no investigation into a particular incident be conducted or disciplinary action taken, the Title IX Coordinator will weigh that request against its obligation to provide a safe, non-discriminatory environment for all students, including the Complainant. (*See Section VI.*)
  
3. When a complaint is brought via hearsay, rumor, or other third-party sources, the Title IX Coordinator will conduct a preliminary inquiry to evaluate the complaint and to determine reasonable cause (i.e. determine if an investigation is warranted).
  - a. The Title IX Coordinator will consider only information that a reasonable person would find reliable and is Relevant.
  - b. The Title IX Coordinator will use substantial evidence standard in inquiries, which is less than a preponderance of the evidence and demands only that a given inference is reasonable and plausible, not necessarily the most probable.
  - c. Inquiries will be documented as part of the case file, regardless of whether an investigation is initiated.
  
4. When the Title IX Coordinator evaluates a complaint and does not find an allegation of Sexual Discrimination and/or Harassment that is so severe, perverse, and objectionably offensive so as to deny access to the Complainant to Cumberland's educational programs or activities, the Title IX Coordinator will terminate all Title IX grievance procedures and promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties. The University may still pursue disciplinary action outside of Title IX procedures. Minimal requirements for dismissal include:
  - a. The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined in Section III. S. even if proved;
  - b. The conduct alleged in the Formal Complaint did not occur in the recipient's education program or activity;
  - c. The conduct alleged in the Formal Complaint did not occur against a person in the United States.

Any party can appeal the dismissal of the complaint directly to the Provost and Vice President for Academic Affairs by submitting a written appeal within three business days of receiving the notification of dismissal. The Provost and Vice President for Academic Affairs will determine if the facts warrant a Title IX investigation and will respond to the party in writing within three business days. The decision of the Provost and Vice President for Academic Affairs on this matter shall be final.

D. Cumberland will conduct an adequate, reliable and impartial investigation in a timely manner (*See Section XV.*), providing the Respondent and Complainant equitable rights during the investigative process.

E. All complaints of Sexual Discrimination and/or Harassment shall be presented to the Title IX Coordinator for investigation and appropriate disposition. A Deputy Title IX Coordinator must always inform the Title IX Coordinator of the receipt of a complaint.

F. Complaints involving Sexual Discrimination and/or Harassment will be investigated by the Title IX Coordinator, a Deputy Title IX Coordinator, or a qualified, sufficiently trained investigator appointed by the Title IX Coordinator.

G. Investigators shall receive training that satisfies the requirements of Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and the federal regulations implementing those statutes, as amended.



H. The Title IX Coordinator shall notify the President that an investigation is being initiated. When employees of the University are involved, the Provost, Vice President of Academic Affairs will also be notified.

I. During the course of the investigation, Cumberland will endeavor to gather sufficient evidence to reach a fair and impartial determination as to whether Sexual Discrimination or Sexual Harassment occurred and, if so, whether a hostile environment has been created that must be redressed.

J. Investigation:

1. The timeframe for conducting the investigation will vary based on the complexity of the investigation and the severity and extent of the alleged conduct (*see Section XV*). The Title IX Coordinator should inform the parties of the status of the investigation on a periodic basis.

2. The burden of collecting evidence and proving a violation of policy is on the University, not on either party.

3. The Title IX Coordinator shall provide written notice to the Complainant and Respondent of the extent to which the University will allow an Advisor to advise the student in an investigation or student disciplinary proceeding. (*See Section III. B.*)

4. Both parties will be provided with a pre-investigation notice with sufficient details and with sufficient time to prepare a response before any initial interview, including:

- a. the identities of the parties involved
- b. the date, time, and location of the alleged incident
- c. the specific violation alleged, and the range of sanctions that may apply for such violations
- d. the conduct allegedly constituting the violation
- e. any relevant Supportive Measures and the date such measures go into effect
- f. informational notices regarding the equal rights of the parties, including the rights to:
  - i. Testify in-person
  - ii. Identify and have considered the testimony of a reasonable number of other witnesses
  - iii. Identify and have considered written evidence
  - iv. Similar and timely access to written statements and other evidence considered in the determination of the complaint
  - v. Equal access to review and comment upon any evidence or information independently developed by the investigator
  - vi. An Advisor as permitted under the policies outlined in *Section III. B.*
  - vii. Receive written notice of the determination of the complaint
  - viii. Appeal as outlined in *Section X.*
  - ix. Receive written notice of the outcome of an appeal, including any changes that were made to the previous determination
- g. informational notices regarding this policy, including:

- i. Access to this policy in its completion
- ii. Retaliation is strictly prohibited and may be grounds for disciplinary measures, up to and including termination or expulsion.
- iii. Confidentiality will be weighed under the policies outlined in *Section VI*.
- iv. The University presumes the Respondent is not responsible for the reported Sexual Discrimination and/or Harassment unless and until the evidence supports a different determination.
- v. Knowingly making false statements, including knowingly submitting false information during the resolution process, is strictly prohibited.
- vi. The University reports Clery violations (Sexual Assault, Domestic Violence, Dating Violence, and Stalking) in ways compliant with the Clery Act.

5. The investigator shall inform all individuals interviewed during the investigation that retaliation is strictly prohibited and may be grounds for disciplinary measures, up to and including termination or expulsion. The investigator shall advise all interviewees that they should contact the investigator immediately if they believe they are being retaliated against.

6. Prior to all meetings and interviews a party is invited to, the party will receive written notice detailing the purpose of the meeting/interview; the date, time, and location of the meeting; and a list of all other participants in the meeting/interview.

7. The investigation shall include interviews with both the Complainant and Respondent, unless either declines an in-person interview.

a. The Complainant and Respondent shall be provided with the same opportunities to have others present during an interview, including the opportunity to be accompanied by the Advisor of their choice to any related meeting or proceeding.

b. The University will not limit the choice of Advisor for either the Complainant or Respondent; however, Advisors will be limited to an advising role only and may not otherwise participate in interview proceedings.

c. The Respondent will be notified in writing of the complaint before the investigator's initial interview with the Respondent (*see Section VII. K. 4.*).

8. The Formal Complaint from the Complainant, or Title IX Coordinator will become part of the investigation report if necessary and will be kept in the case file.

9. A summary of the Respondent's response to the complaint as taken by the investigator will be provided in writing for review by the Respondent. The Respondent will be asked to propose any changes necessary, with both the original document and the proposed changes being logged as the official statement. The statement, after reviewed by the Respondent, will become part of the investigation report if necessary and will be kept in the case file. No parts of this statement will be available for copy.

10. When either party declines an in-person interview, the refusal to participate will be noted in the case file, and the University will proceed based on the information available, including making final determinations
11. No audio or video recording of any kind is permitted during investigation meetings.
12. The investigator is expected to request a list of relevant witnesses and evidence from the Complainant and Respondent and take such into consideration.
  - a. Both the Complainant and the Respondent are permitted to provide other relevant evidence to the investigator. Evidence includes any facts or information presented in support of an assertion and may include text messages, email exchanges, timelines, receipts, photographs, etc. The investigator may also consider additional documents, items or other relevant information.
  - b. Any documentation shared by the Complainant or the Respondent with the investigator will be provided to the other party via the Title IX Coordinator's periodic updates.
  - c. The Complainant and the Respondent both have the right to propose questions to one another. Questions deemed by the investigator as inappropriate will not be asked, and the requesting party (Complainant or Respondent) will be notified of why those questions were not asked.
  - d. The Complainant and the Respondent both have the right to propose questions to witnesses. Questions deemed by the investigator as inappropriate will not be asked, and the requesting party (Complainant or Respondent) will be notified of why those questions were not asked.
13. The investigation shall include interviews with relevant witnesses identified by the Complainant and Respondent and any other potential, Relevant witness made known to the investigator via other means. However, the investigator shall not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the school obtains that party's voluntary, written Consent to do so.
14. The investigation shall include the gathering and reviewing of any documentary, electronic, physical, or other type of relevant evidence.
15. Evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply Consent or preclude a finding of Sexual Discrimination and/or Harassment. Where the parties have a prior sexual relationship, and the existence of Consent is at issue, the sexual history between the parties may be Relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether Consent was sought and given during the incident in question. However, this does not assume that the prior sexual history was consensual and this should be a factor in considering relevance.
16. The investigation shall not consider any evidence about the Complainant's prior sexual conduct with anyone other than the Respondent. An individual's character or reputation with respect to other sexual activity is not Relevant and will not be considered as evidence. Similarly, an individual's prior or subsequent sexual activity is typically not Relevant and will only be considered as evidence under limited

circumstances. For example, prior sexual history may be Relevant to explain the presence of a physical injury or to help resolve other questions raised by the report. The investigator will determine the relevance of this information.

17. Information that does not directly relate to the facts at issue, but instead reflects upon the reputation, personality, qualities, or habits of an individual is character evidence and is not relevant.

18. Evidence of occurrences of prohibited conduct so distinctive and so closely resembling either party's version of the alleged encounter as to tend to prove a material fact ("pattern evidence") may be considered. Where there is evidence of a pattern of similar prohibited conduct, either before or after the conduct in question, regardless of whether there has been a prior finding of a policy violation, this information may be deemed Relevant to the determination of policy violation or assigning of a sanction. Instances will be rare and the determination of relevance will be based on an assessment of whether the previous or subsequent incident was substantially similar to the conduct cited in the report or indicates a pattern of behavior and substantial conformity with that pattern.

19. No parties involved in the investigation will be required by Cumberland to sign a non-disclosure agreement, but all parties should recognize that the integrity of the investigation process can be harmed when witnesses discuss the case with one another. This may impact the University's ability to reach a fair, impartial conclusion. Witnesses are recommended to seek advice from Advisors or confidential support services. All parties involved in an investigation should remember that all proceedings are private, and all persons are expected to maintain the privacy of the proceedings. While there is an expectation of privacy around what is discussed, the parties have discretion to share their own experiences with others if they so choose.

K. Notices required by this policy will be sent via the student's or employee's official Cumberland email account. A notice sent to a student organization will be sent to the organization's president and Advisor at those individuals' Cumberland email address. Students and employees have the responsibility to regularly check their University-issued email accounts. Notices to third parties will be sent via the contact information available to the Title IX Coordinator. The requirement to provide notice will be satisfied when sent as indicated, and any period for response will begin on the date the email is sent.

L. Some instances of Sexual Discrimination and/or Harassment may also constitute criminal conduct. In such instances, the Complainant is also encouraged to file a report with local law enforcement and, if requested, the University will assist the Complainant in doing so to the extent the University is able. The pendency of a criminal investigation, however, does not relieve the University of its obligation to investigate Sexual Discrimination and/or Harassment.

NOTE: The standards for finding a violation of criminal law are different from the standards for finding a violation of this policy (i.e., "beyond a reasonable doubt" in criminal cases versus "Preponderance of Evidence" for purposes of this policy). As a result, the outcome of any criminal proceeding is not necessarily determinative of whether a violation of this policy has occurred.

## **VIII. Investigation Report**

A. Upon completion of the investigation, the investigator shall prepare a written report that fairly summarizes the evidence, including both inculpatory and exculpatory evidence. Relevant evidence gathered during the investigation, as appropriate, may be attached as appendices. Documents protected by the attorney work-product privilege, such as the investigator's personal notes, will not be attached to the investigation report.

B. Upon the receipt of the initial report by the Title IX Coordinator, both the Complainant and the Respondent will be notified via their Cumberland email address. Parties may review the investigation report, as well as all evidence directly related to the allegations not used in the investigation report, in the Title IX Coordinator's office in person. Parties have 10 actual days after the notification to review the report and evidence, and to submit a written response to the evidence which must be considered by the investigator before finalizing the report. The investigator will be notified when this review is complete, and the report shall be returned to the investigator for final review and signature.

C. Both the Complainant and the Respondent will be provided a copy of the final investigation report. The case file, including extraneous notes, summaries, and evidence will not be available for review.

1. All records will be kept in the Title IX Coordinator's office for a minimum of seven years.

### **IX. Live Hearing Procedures**

A. Upon the receipt of the final investigation report from the investigator, the Title IX Coordinator shall complete the following steps:

1. Simultaneously notify both the Respondent and the Complainant that the final report has become available for review at least 10 actual days before any hearing. Advisors may review the report.
2. Deliver the report to the appropriate Decision Maker, who will have training on question relevance, including how to provide sound and defensible rationale for excluding unapproved questions. Decision Makers are selected by the Title IX Coordinator and may include the University's legal counsel, senior faculty members, or senior staff members.
3. The Title IX Coordinator will call together a live hearing panel of the appropriate Decision Maker and two members of the Title IX Council. The Decision Maker will serve as the Chair of the panel.
  - a. Members of the Title IX Council will be current faculty or staff members at the University, and will be appointed by the Title IX Coordinator.
  - b. Members of the Title IX Council, including Decision Makers, will have annual training that satisfies the requirements of Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and the 15 20 U.S.C. § 1981 16 20 U.S.C. § 1092(f) Cumberland Title IX Policy 22 federal regulations implementing those statutes, as amended. Members will understand confidentiality requirements and the University's Title IX policy.
  - c. Members of the panel, including Decision Makers, must disclose a conflict of interest with either party that could create a perception of bias. Conflicts of interest will result in the member being removed from the panel and replaced.
  - d. If the Complainant or Respondent believes a panel member or the Decision Maker has a conflict of interest, that party must submit a written explanation of the reason for that belief to the Title IX Coordinator. The explanation must be submitted within 3 business days of the time when the party knew or should have known the facts that would give rise to the alleged conflict of interest. The Title IX Coordinator, in consultation with necessary counsel, will determine if a conflict of interest exists under the criteria set forth in T.C.A. § 4-5-303 or some other basis that warrants the appointment of a different

hearing officer or committee member and respond to the party in writing within 3 business days, absent good cause. The decision of the Title IX Coordinator shall be final.

- B. The panel will receive the investigation report (as described in *Section VIII.*) in advance of the live hearing.
- C. The Complainant and Respondent shall receive sufficient notice of the hearing (including date, time, location, participants, and purpose). The Complainant, Respondent, and each party's Advisor shall be allowed access to any evidence presented during any disciplinary hearing or other proceeding during the disciplinary process.
- D. Both the Complainant and Respondent will be granted live video and audio access to the entirety of the proceedings upon request, but both parties will never be present in the same location at the same time during the hearings.
- E. Hearings will consist of the panel, including the Decision Maker, requesting the presence of individuals including the Complainant, the Respondent, the investigator, and any witnesses.
1. Both parties may request to appear before the hearing panel if they wish and make an oral statement regarding the facts. Both parties shall be allowed to have an Advisor of their choice accompany them. During this appearance, the panel may ask questions of the party, but extended statements or questioning is unnecessary. The other party's Advisor may also ask questions of the party (*See Section IX. F.*)
    - a. Only Relevant cross-examination and other questions may be asked of a party or witness.
    - b. Questions that test credibility will be allowed, but intimidating questioning tactics will not be allowed.
    - c. Before any question is answered, the Decision Maker must first determine whether the question is Relevant and explain any decision to exclude a question as not Relevant.
    - d. Questions and evidence about the Complainant's sexual predisposition, prior sexual behavior, or similar questions are not Relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, 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.
  2. The hearing panel may ask the investigator questions related to the investigation report.
  3. The hearing panel may request to hear from one or more of the witnesses, though the panel's presumption should be that the investigator has identified and interviewed all relevant witnesses and supplied the information necessary for the hearing panel to render its decision and determine sanctions. Both parties' Advisors may also request to hear from any witness for cross-examination, with all questions adhering to guidelines outlined in *Section IX. E. 1.*
- F. Advisors of Complainants and Respondents have the right to ask questions and follow-up questions to, or "cross-examine", the other party and all witnesses during the live hearing.
1. Any cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's Advisor of choice and never by a party personally.
  2. All questions must adhere to guidelines outlined in *Section IX. E. 1.*
  3. If a party does not have an Advisor present at the live hearing, the University will provide an appropriate Advisor, free of charge to the party.

4. If a party or witness does not submit to cross-examination at the live hearing, the Decision Maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Decision Maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

G. All hearings will be recorded by transcript or audio/audiovisual recording. The Complainant and Respondent will both have access to this record for inspection and review, but never for copy.

H. The hearing panel will convene to deliberate and render a decision regarding whether or not the Respondent has violated University policy by a preponderance of the evidence, though the final determination is at the sole discretion of the Decision Maker. The Decision Maker shall use a preponderance of the evidence standard when reaching a decision.

I. The Decision Maker prepares the hearing panel's written decision and rationale, including the specific sections of the code alleged to have been violated; a description of all the steps taken from the receipt of the Formal Complaint through the hearing; specific descriptions of all findings of fact that support the determination; a statement and rationale with respect to each allegation, including determination (finding of responsibility or non-responsibility), and sanctions. The written determination will be returned to the Title IX Coordinator, who will provide simultaneous written notification of the outcome to the Complainant and the Respondent via Cumberland email. The Decision Maker's determination will be filed with the investigation report.

J. If either the Complainant or Respondent is dissatisfied with the panel's determination, that determination may be appealed to the Provost and Vice President for Academic Affairs by notifying the Title IX Coordinator in writing of the decision to appeal within 5 business days of the date that the panel's determination is sent to the parties' University email addresses. (*See Section X.*)

K. If a written request for appeal is not received within 5 business days, the determination is final.

L. If a final decision has been made that a policy violation occurred, the Title IX Coordinator shall determine if any remedies are required to address the campus-wide environment, taking into consideration the impact of an incident of Sexual Discrimination and/or Harassment on the campus as a whole and on specific groups or areas on campus. For example, the Title IX Coordinator may determine that specific training is needed for a student group whose members have been accused of Sexual Assault.

#### **X. Appeal of Decision to the Provost and Vice President for Academic Affairs**

A. The appealing party must explain, in writing, the basis on which the party appeals, *i.e.*:

- a. A procedural irregularity that affected the outcome of the matter;
- b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- c. Evidence that Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter; or
- d. Additional grounds as provided by the appealing party to all parties.

B. The Provost and Vice President for Academic Affairs will issue a written response to the appeal as promptly as possible. This decision will constitute Cumberland's final decision on the complaint. The Complainant and

Respondent shall be simultaneously notified of the Provost and Vice President for Academic Affairs' decision in writing by the Title IX Coordinator.

### **XI. Withdrawal of a Complaint**

The Complainant may request to withdraw a Complaint at any time. The University reserves the right to make a determination whether to approve or deny this request, but will strongly consider the Complainant's wishes.

Withdrawal or Resignation While Charges Pending:

A. Students: Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the resolution process ends, as the University no longer has disciplinary jurisdiction over the withdrawn student. However, the University will continue to address and remedy any systemic issues, variables that have contributed to the alleged violation(s), and any ongoing effects of the alleged Sexual Discrimination and/or Harassment. The student who withdraws or leaves while the process is pending may not return to the University. A hold will be placed on their ability to be readmitted. If the student only withdraws or takes a leave for a specified period of time (e.g. one semester or term), the resolution process will continue and that student is not permitted to return to the University unless and until all sanctions have been satisfied.

B. Employees: Should an employee resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee. However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged Sexual Discrimination and/or Harassment. The employee who resigns with unresolved allegations pending is not eligible for rehire with the University, and the records retained by the Title IX Coordinator will reflect that status. All University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

C. Third Parties: Should a third party discontinue their relationship with the University with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the third party. However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged Sexual Discrimination and/or Harassment.

### **XII. False Reports**

Because of its strong desire to prevent and remedy Sexual Harassment, the University encourages all good faith complaints of Sexual Harassment. However, the University also has a duty to balance the rights of all parties. Accordingly, if the University's investigation reveals that a complaint of Sexual Harassment was knowingly false, the complaint will be dismissed and the person who filed the knowingly false complaint may be subject to discipline.

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

### **XIII. Retaliation**

Neither the University nor any person may intimidate, threaten, coerce, or discriminate against any



individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.

Engaging, encouraging others, or directing others in an adverse action or threat of an adverse action against a Complainant, Respondent, or any individual or group of individuals involved in the complaint, investigation, and/or resolution of an allegation of a violation of University's Student Code of Conduct, Title IX policy, or other University policy; including any individual who attempts to intervene, prevent, or report behavior prohibited by these policies. Retaliation can be committed by an individual or group of individuals, not just a Complainant or Respondent. Examples of retaliation include, but are not limited to, threats, intimidation, pressuring, continued Sexual Discrimination and/or Harassment, violence, or other forms of harm to others.

Charges against an individual for code of conduct violations that do not involve Sexual Discrimination and/or Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

In an effort to prevent retaliation, the University will keep confidential the identity of Complainants, Respondents, and witnesses, except as may be permitted by FERPA, or as required by law, or as necessary to carry out a Title IX proceeding.

The exercise of rights protected under the First Amendment does not constitute retaliation. Charging an individual with a code of conduct violation for making a materially false statement in bad faith does not constitute retaliation (*See Section XIV.*)

Cumberland faculty, employees, and students are strictly prohibited from retaliating, intimidating, threatening, coercing, or otherwise discriminating against any individual for exercising their rights or responsibilities under any provision of this policy. Retaliation will result in disciplinary measures, up to and including termination or expulsion.

#### **XIV. Relationships between Individuals of Different University Status**

A sexual or romantic relationship involving individuals of different University status is not, in and of itself, Sexual Harassment as defined by this policy and will not be investigated or adjudicated under this policy. Such an interaction may be a violation of another University policy and subject to separate disciplinary procedures.

A sexual or romantic relationship between students and teachers, supervisors or mentors (faculty members, staff members, or other students) violates both University and professional standards, and potentially violates state and federal anti-discrimination laws. The University prohibits all sexual and romantic relationships between faculty members and students (both undergraduate and graduate students).

A conflict of interest also exists if there is a consensual romantic or sexual relationship in the context of employment supervision or evaluation. Therefore, a supervisor may not influence, directly or indirectly, salary, promotion, performance appraisals, work assignments or other working conditions for an employee with whom such a relationship exists.

#### **XV. Timeframe for Completion of Investigation and Disciplinary Process**

The U.S. Department of Education has made clear that the length of investigations may vary with the complexity and unique factors in each case. Examples of such factors include, without limitation, circumstances in which critical witnesses are unavailable or if law enforcement requests the University temporarily halt its investigation for a brief period of time. Accordingly, all timeframes set forth in this

policy may be altered by the Title IX Coordinator for good cause, and the Title IX Coordinator will provide to parties written notice, including rationale, of temporary delays or extensions of this process for good cause. The University's overarching goal is that all complaints be investigated in a prompt, fair, and impartial manner.

- A. There is no time limit or statute of limitations on a Complainant's decision to file a formal Title IX Complaint with the University.
- B. There is no time limit for parties to seek to initiate or suspend informal resolutions.
- C. There is no time limit for Complainants to request Supportive Measures.
- D. Business days are available in the current University Catalog and via the Academic Calendar and Important Dates on the University's website.

#### **XVI. Education and Prevention Programs**

Cumberland will engage in comprehensive educational programming to prevent Sexual Discrimination and/or Harassment. Educational programming consists of primary prevention and awareness programs for all incoming students and new employees and ongoing awareness and prevention campaigns for students, faculty, and staff that:

- A. Identifies Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Sexual Discrimination and Sexual Harassment as prohibited conduct
- B. Defines what behavior constitutes Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Sexual Discrimination and Sexual Harassment
- C. Defines what behavior and actions constitute Consent to sexual activity in the State of Tennessee
- D. Provides safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Sexual Harassment against a person other than the bystander
- E. Provides information on risk reduction so that students and employees may recognize warning signs of abusive behavior and how to avoid potential attacks. The Title IX Coordinator will also be responsible for the notice (including publication on website and both Employee and Student Handbooks) of Title IX policy updates and revisions to the community, including applicants, students, employees, contractors, and parents/guardians,

#### **XVII. Assistance in Cases of Sexual Discrimination and Sexual Harassment: Rights and Options**

Regardless of whether a person who has experienced Sexual Harassment elects to pursue a criminal complaint, Cumberland will provide the parties with a written explanation of her/his rights as a member of Cumberland University.

- A. In the Tennessee court system, a victim of Domestic Violence, Dating Violence, Sexual Assault and Stalking has the following rights:
  1. the right to confer with the prosecution;
  2. the right to be free from intimidation, harassment and abuse throughout the criminal justice system;
  3. the right to be present at all proceedings where the defendant has the right to be present;
  4. the right to be heard, when Relevant, at all critical stages of the criminal justice process as defined by the General Assembly;

5. the right to be informed of all proceedings, and of the release, transfer or escape of the accused or convicted person;
6. the right to a speedy trial or disposition and a prompt and final conclusion of the case after the conviction or sentence;
7. the right to restitution from the offender;
8. the right to be informed of each of the rights established for victims.

B. Information regarding Orders of Protection in Tennessee is available at the following link:  
<https://www.tncourts.gov/programs/self-help-center/forms/order-protection-forms>

C. Additional information related to such orders can be found at  
<https://www.tncoalition.org/curricula-publications>.

D. Cumberland does not publish the names or identifiable information of crime victims in crime logs or in the release of timely warnings.

#### **XVIII. Resources for Parties Involved in Sexual Discrimination and Sexual Harassment**

A. The resources listed below are not exhaustive or limited to those who wish to make an official report or participate in an institutional hearing, police investigation, or criminal prosecution. However, in cases where a person who has experienced Sexual Harassment wishes to maintain complete confidentiality, the person should review carefully *Section VI*.

B. On campus resources available to all parties involved in Sexual Discrimination and Sexual Harassment:

Campus Security  
 Mitchell Student Center  
 615-476-3061

For free counseling on campus, please contact the Cumberland University Counseling Center at 615-547-1397, or Labry Hall 225.

Title IX Coordinator  
 William R. Richardson  
 Memorial Hall 101C  
 615-547-1257  
 rrichardson@cumberland.edu

Title IX Investigators	
Stephanie Davis	Jake Whicker
615-547-1387	615-547-1214
sdavis@cumberland.edu	jwhicker@cumberland.edu

C. Local Resources  
 Lebanon Police

911 for emergencies  
615-444-2323 for non-emergencies

Vanderbilt Wilson County Hospital  
1411 West Baddour Parkway  
Lebanon, TN 37087  
(615) 444-8262

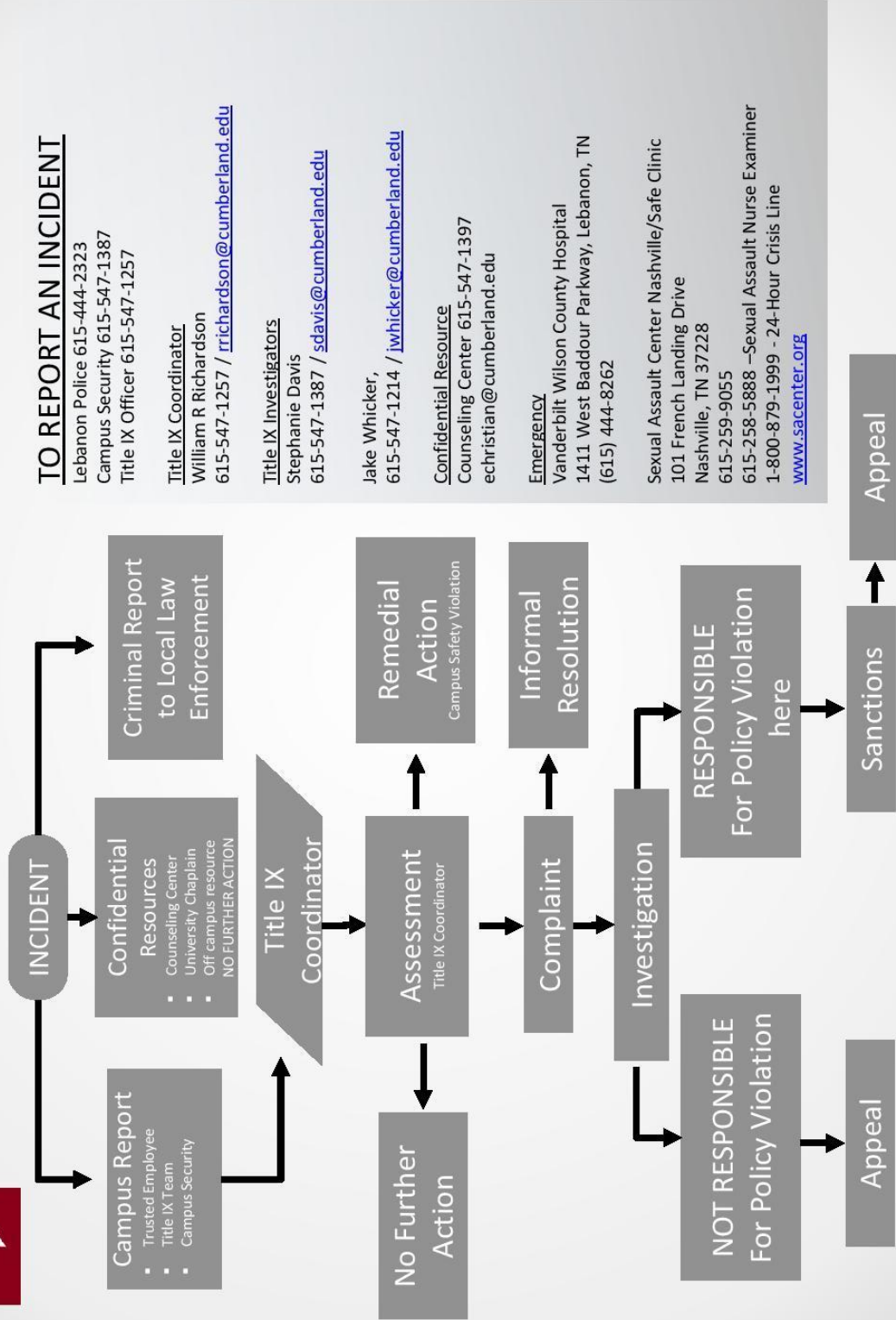
TN Coalition to End Sexual Violence  
615-386-9406  
800-289-9018 [www.tncoalition.org](http://www.tncoalition.org)

Sexual Assault Center Nashville/Safe Clinic  
101 French Landing Drive  
Nashville, TN 37228  
615-259-9055  
615-258-5888 – exam by a Sexual Assault Nurse Examiner  
1-800-879-1999 - 24-Hour Crisis Line  
[www.sacenter.org](http://www.sacenter.org)

Last Updated: February 16, 2023



# SEXUAL MISCONDUCT REPORTING



## TO REPORT AN INCIDENT

Lebanon Police 615-444-2323  
 Campus Security 615-547-1387  
 Title IX Officer 615-547-1257

Title IX Coordinator  
 William R Richardson  
 615-547-1257 / [rrichardson@cumberland.edu](mailto:rrichardson@cumberland.edu)

Title IX Investigators  
 Stephanie Davis  
 615-547-1387 / [sdavis@cumberland.edu](mailto:sdavis@cumberland.edu)

Jake Whicker,  
 615-547-1214 / [jwhicker@cumberland.edu](mailto:jwhicker@cumberland.edu)

Confidential Resource  
 Counseling Center 615-547-1397  
[echristian@cumberland.edu](mailto:echristian@cumberland.edu)

Emergency  
 Vanderbilt Wilson County Hospital  
 1411 West Baddour Parkway, Lebanon, TN  
 (615) 444-8262

Sexual Assault Center Nashville/Safe Clinic  
 101 French Landing Drive  
 Nashville, TN 37228  
 615-259-9055  
 615-258-5888 –Sexual Assault Nurse Examiner  
 1-800-879-1999 - 24-Hour Crisis Line  
[www.sacenter.org](http://www.sacenter.org)