

# Formal Complaint Investigation Process

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JMU TITLE IX OFFICE, MADISON HALL 4TH FLOOR, 540-568-5219,  
TITLEIX@JMU.EDU

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## General Information

### Title IX Office

The [Title IX Office](#) is responsible for conducting prompt and equitable investigations of formal complaints of Title IX sexual harassment as defined in [Policy 1346](#), or sexual misconduct, as defined in [Policy 1340](#). The presumption is that no policy violation has occurred unless proven otherwise by a preponderance of the evidence in an adjudication process.

The Title IX Office, including coordinators and investigators, receive training on how to serve impartially, including by avoiding pre-judgment of facts at issue, conflicts of interest, and bias. Title IX personnel who conduct investigations also receive training on issues of relevance and how to create an investigative report that fairly summarizes relevant evidence. Materials used to train the Title IX Office including coordinators and investigators can be found on the [Title IX Website](#).

### Deadlines and Extensions

Anticipated timelines, deadlines, restrictions, or procedures detailed here will not be altered except in necessary or extreme circumstances, for good cause, in order to uphold the intent of the process, as determined by the Title IX Office. If an extension is granted, the complainant and respondent in a formal complaint will be informed of the reason for the extension. Complainants and respondents may request extensions for good cause under these procedures. The determination regarding whether or not an extension will be granted rests with the Title IX Coordinator.

### Communication and Meetings

The Title IX Office communicates with university students and employees using the university student or employee's assigned JMU email address. As laid out in [Policy 1209](#), university community members are responsible for regularly checking and maintaining their assigned email accounts.

Email correspondence including notifications sent by the Title IX Office are considered received 24 hours after the date and time the correspondence was sent.

Meetings under these procedures will generally be scheduled during regular university business hours, which are Monday-Friday, 8:00 AM – 5:00 PM, unless the university is closed. If the Title IX Office assigns a meeting time and date to a party participating in these procedures, such meetings for students will be set around the student's academic schedule. Such meetings for employees will be scheduled to take place during regular university business hours.

## Guidelines

### Reporting to Law Enforcement

Filing a formal complaint with the Title IX Office does not restrict the complainant's ability to also report criminal conduct to law enforcement and to pursue both options simultaneously or not at all. Individuals who have experienced or become aware of sexual misconduct or Title IX sexual harassment are encouraged to report incidents directly to law enforcement.

### **Freedom of Speech and Academic Freedom**

These formal complaint investigation procedures do not restrict or impair:

- The exercise of rights protected under the United States Constitution such as the right to free speech.
- The ability of the complainant and respondent to discuss the allegations that are the focus of a formal complaint investigation or to gather evidence for the purpose of the investigation.
- The rights of faculty members and students of the institution to academic freedom.

### **Good Faith**

All individuals participating in procedures under [Policy 1346](#) or [Policy 1340](#) are presumed to be acting in good faith. Failure to act in good faith in bringing an allegation under Policy 1346 or Policy 1340, failure to act in good faith in participating during any proceedings under Policy 1346 or Policy 1340, or in any other capacity concerning Policy 1346 or Policy 1340 constitutes a form of misconduct and may result in sanctions separate from, and not dependent on, the outcome of any report or formal complaint under Policy 1346 or Policy 1340.

### **Prohibition on Retaliation**

The university prohibits retaliation against a group or individual exercising rights under and/or participating in, or refusing to participate in, any procedures under Policy 1346 or Policy 1340. Retaliation constitutes a form of misconduct and may result in sanctions separate from, and not dependent on, the outcome of any report or formal complaint filed under Policy 1346 or Policy 1340. Complaints of alleged retaliation are not handled under these procedures and if received by the Title IX Office, are referred directly to the university authority responsible for adjudicating claims of retaliation.

### **Amnesty**

The university generally will not pursue alleged policy violations of personal consumption of alcohol or drugs for complainants, respondents, and witnesses in procedures under Policy 1346 or Policy 1340.

### **Voluntary Participation**

Participation in the formal complaint investigation and hearing process is voluntary for the complainant, respondent, and witnesses and the university has no mechanism for compelling individuals to participate. However, if the complainant, respondent, or witnesses chooses not to submit to cross examination during a hearing, the board may not rely on any statements of that party in reaching a determination regarding responsibility.

### **Withdrawal of Complaint, Dismissals, and Adaptable Resolution**

#### **Withdrawal of Complaint, Dismissals**

The complainant may withdraw a formal complaint at any time during the investigation and hearing, prior to the determination of an outcome, by notifying the Title IX Coordinator in writing. Such notification may result in discretionary dismissal under Policy 1346 or 1340 as applicable.

Circumstances that may lead to mandatory or discretionary dismissal of a formal complaint of Title IX Sexual Harassment may be found in Policy 1346. Circumstances that may lead to mandatory or discretionary dismissal of a formal complaint of sexual misconduct may be found in Policy 1340. The Title IX Office is responsible for informing the complainant and respondent of a dismissal of a formal complaint under Policy 1340 or 1346 as applicable.

## Alternative Resolution

The university does not require complainants and respondents to initiate or participate in an alternative resolution process. In certain cases, after the filing of a formal complaint, an alternative resolution process may be available in lieu of the formal complaint process. Complainants or respondents interested in pursuing an alternative resolution process may contact the Title IX Office for more information.

## Emergency Removal Pending Outcome and Transcript Notation

### Emergency Removal Pending Outcome

Pending the outcome of a formal complaint process, a respondent may be temporarily suspended from attendance and enrollment, suspended from any other education program or activity including employment, and/or issued a no-trespass banning the person from campus. Refer to [Policy 1346](#) or [Policy 1340](#) as applicable for more information on the circumstances that may prompt a consideration for emergency removal and the procedures used by the university in such circumstances.

### Transcript Notation

If a student Respondent withdraws while under investigation for an allegation of sexual violence, defined as physical sexual acts perpetrated against a person's will or against a person incapable of giving consent, a notation will be placed on the student respondent's transcript until a final decision in the case is rendered. In cases where a student respondent is found responsible and suspended or expelled for sexual violence a notation will be placed on the student respondent's transcript for the duration of the suspension or expulsion.

Such notations will read, as applicable:

- Withdrew while under investigation for violation of Student Standards of Conduct
- Expelled for violation of Student Standards of Conduct
- Suspended for violation of Student Standards of Conduct

Student respondents receiving a transcript notation for a suspension will have it automatically removed by the Office of the Registrar once the suspension period has ended. After a period of three years, students may contact the [Office of Student Accountability and Restorative Practices](#) to request removal of a notation for good cause shown.

## Supportive Measures and Resources

Reasonably available supportive measures and resources are available to JMU students and employee complainants and respondents and may include but are not limited to the following:

### Supportive Measures Available through the Title IX Office:

- Issuance of a two way no contact order if both parties are current JMU students and/or employees.
- Assistance connecting to law enforcement and other on-campus and off-campus resources.
- *For students:* Communication to Instructors regarding absences and requests for academic assistance. Assistance with temporary on-campus housing changes.
- *For Employees:* Referral to Human Resources to learn about resources available through benefits package.

### On Campus Resources for Students and Employees

[James Madison University Police Department](#): General information and assistance (540-568-6912), on-campus emergencies (540-568-6911), campus safety escorts (540-568-6913).

### Confidential On Campus Resources for Students

- Confidential survivor advocacy, safety planning, accompaniment, assistance with obtaining protective orders: [The Well](#), 1st Floor SSC, 540-568-2831.
- Confidential personal and group counseling: [JMU Counseling Center](#), 3rd Floor SSC, 540-568-6552.
- Confidential medical care, STI testing, urgent care services: [University Health Center](#), 1st Floor SSC, 540-568-6178.

### On Campus Resources for Employees

- [Human Resources](#), Wine Price Building, 540-568-6165
- *For Faculty*: Faculty Ombudsperson, available by appointment. For contact information, go to the [JMU Faculty Ombudsperson webpage](#).

### Community Resources available for Students and Employees

- Confidential survivor advocacy, medical accompaniment, confidential group and individual counseling, assistance with obtaining protective orders, 24 HR crisis hotline: [The Collins Center](#), 540-432-6430.
- Medical care, SANE exams, STI testing, mental health counseling, emergency health services: [Sentara RMH Medical Center](#), 2010 Health Campus Drive, Harrisonburg, 22801.
- To report criminal activity or assistance obtaining a protective order in the City of Harrisonburg: [Harrisonburg Police Department](#), Emergencies (911), Non-Emergency and assistance with protective orders (540-434-4436).
- To report criminal activity or receive assistance obtaining a protective order in Rockingham County: [Rockingham County Sherriff's Office](#), Emergencies (911), Non-Emergency and assistance with protective orders (540-564-3800).

## Filing a Formal Complaint

### How to File a Formal Complaint

A complainant may file a formal complaint alleging sexual harassment, as defined in [Policy 1346](#), or sexual misconduct, as defined in [Policy 1340](#), against a respondent who is currently employed by, an affiliate, or a student of the institution, and requesting that the university investigate the allegation, directly with the Title IX Office electronically, 24 hours a day, 7 days a week, by emailing the formal complaint to [titleix@jmu.edu](mailto:titleix@jmu.edu), or by mailing the formal complaint to Title IX Office, Attn: Title IX Coordinator, MSC 7806, James Madison University, Harrisonburg, VA 22807. A complainant may submit their written formal complaint to the Title IX office in person during regular business hours. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the educational program or activity of the university.

### Information to Include in the Formal Complaint

The formal complaint must include the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint. In addition to the complainant's name, the formal complaint document that is filed should include:

- The name of the respondent
- The approximate date, time, and location of the alleged incident
- A description of the incident that the complainant would like the university to investigate.

**Please Note:** When the written notice of allegation is sent, the respondent will be invited to inspect and review the formal complaint before the respondent would be expected to participate in any investigation interviews or respond in any way to the investigation.

### Assistance with Filing

The filing of a formal complaint is meant to be an accessible process without barriers. The Title IX Office invites complainants who may not be able, for any reason, to file a formal complaint in the format recommended in these procedures to contact the Title IX Office for assistance. Such assistance is not to be in any way construed as pressure to file a formal complaint or a presumption on the part of the Title IX Office that a violation of policy has occurred.

### Special Circumstances

In cases where there is an increased risk to individual or community safety, the university may instruct the Title IX Coordinator to sign a formal complaint in order to initiate an investigation, even if the complainant does not wish to move forward. In those cases, the Title IX office will promptly contact the complainant in accordance with these procedures and the complainant will maintain their right to participate fully as outlined in the written notice of allegation. The signing of a formal complaint by the Title IX Coordinator does not mean the Title IX Coordinator will be participating in the process as the complainant.

### Title IX Actions upon Receipt of a Formal Complaint

Upon receipt of the formal complaint, The Title IX Coordinator or another member of the Title IX Office staff, will promptly contact the complainant to verify that the complainant completed and submitted the formal complaint, verify that the complainant is authorizing the Title IX Office to investigate the formal complaint, review the procedures that will be used to investigate the formal complaint, including the right to bring an advisor of choice to any formal complaint meeting and proceedings, and discuss reasonably available supportive measures.

## Written Notice of the Allegation

The Title IX Office will then send written notice of the allegation of the formal complaint to the respondent. The complainant will also receive a copy of the written notification of the allegation. The notification shall generally state and include:

- The date, time, and location of the alleged incident and the names, if known, of the complainant and respondent.
- The specific policy alleged to have been violated and that if other allegations are uncovered during the course of an investigation, The Title IX Office will send a separate written notification of allegation.
- Information regarding formal complaint investigation procedures and adjudication procedures.
- Information about reasonably available supportive measures.
- The right of the complainant and respondent to bring an advisor of their choice to any meetings and proceedings and information on the role of the advisor in the investigation procedures.

- The presumption that no policy violation has occurred unless proven otherwise by a preponderance of the evidence in an adjudication process and that in conducting the investigation the Title IX Office serves fairly and impartially.
- The right of the respondent to inspect and review the formal complaint submitted by the complainant, before participating in an investigative interview or submitting a response.
- The equal opportunity of both parties to have sufficient time to prepare before participating in investigative interviews.
- The equal opportunity of both parties to submit relevant evidence and inspect and review evidence submitted.
- The name of the individual assigned to conduct the formal complaint investigation.
- The equal opportunity of the complainant and respondent to have 10 days upon receipt of the investigative report to submit a final response.
- The prohibition against retaliation for parties participating in procedures under [Policy 1346](#) and [1340](#).
- That parties are instructed to preserve any potentially relevant evidence in any format.
- That the formal complaint investigation is the only opportunity prior to a hearing for the complainant and respondent to submit evidence and statements.
- That for any information from a party or witness to be considered in the hearing, the party or witness must participate in the hearing by submitting to cross examination.
- How to access information about options that may exist for adaptable resolution.
- How to schedule an appointment with the Title IX Office to ask questions regarding the procedures and discuss supportive measures.

The Title IX Office is required to make reasonable efforts to contact and discuss procedures and supportive measures with the respondent and to make the formal complaint document submitted by the complainant available to the respondent before the respondent is expected to participate in any investigation proceedings. However, the decision as to whether or not to participate, rests with the respondent.

## Formal Complaint Investigation

The assigned investigator will generally follow the procedures listed here and will attempt to make contact with the complainant, respondent, and witnesses for the purpose of interviewing them and collecting evidence for the Investigation. The complainant and respondent may have an advisor of their choice at any meetings under these proceedings. The complainant, respondent, and witnesses are invited to participate in investigation interviews and may bring with them to their interviews any information, including their own written statement, they would like to submit for the investigation with the understanding that the complainant, respondent, and their advisors will have full access to all materials collected by and submitted to the investigator for the formal complaint investigation. *The general timeframe for evidence collection and the drafting of the investigative report will be 20 business days.*

### Evidence Collection and Submission

The Title IX Office is responsible for gathering evidence for the investigation. The complainant and respondent are also welcome to submit any and all relevant evidence for the investigation prior to the

drafting of the investigative report. Evidence submitted for the investigative report by any party will be made available to the complainant, respondent, and their advisors for inspection and review.

The Title IX Office does not have a mechanism for compelling individuals or agencies to share documents, video, and audio that may be relevant to the investigation of a formal complaint including but not limited to medical reports, educational records, correspondence (either electronic or mailed) that may have taken place between parties involved, surveillance video, police reports, personal text messages, phone records, other electronic communication, pictures, video, maps, room layouts, etc. If the university is unable to obtain such information, parties who wish to include any such information, may submit it directly to the investigator prior to the drafting of the investigative report.

The Title IX Office cannot access, accept, 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 or paraprofessional's capacity, or assisting in that capacity, and which are made or maintained in connection with the provision of treatment to the party, unless the party voluntarily, provides written consent to the Title IX Office to include the information in the investigation.

The Title IX Office will exclude from the investigative report any information that pertains to the sexual predisposition of the complainant and respondent. The Title IX Office will also exclude from the investigative report any information about the complainant or respondent's prior sexual behavior unless such information is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if it concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is offered to prove consent.

### Role of the Advisor of Choice

The role of the advisor of choice is to serve as a support person to the party they are serving as advisor for. The advisor of choice may speak directly with the party they are providing support for and may ask clarifying questions about policy and procedure of the Title IX Office and the investigator. However, an advisor of choice may not speak for the party they are supporting during the investigation of the formal complaint. The complainant and respondent may need to provide written permission for their respective advisor of choice to directly receive the investigative report.

### Witnesses

For the purpose of these procedures, a witness is an individual who has information about the alleged incident(s) that is (are) the focus of the formal complaint investigation.

Generally, the investigator will identify witnesses to contact for the investigation of the formal complaint. The complainant and respondent may also identify witnesses.

The complainant and respondent may also elect to submit statements they have gathered independently from witnesses for the investigation. Though, any such statements will be accepted for the investigation, the investigator will still attempt to make contact with the witness for the purpose of conducting an interview.

While the investigator will make reasonable attempts to reach out to all potential witnesses, there is no mechanism for Title IX Office to compel witnesses to be interviewed.

Participating in the investigation is not the same as participating in the hearing procedures. In particular, for any witness statement to be considered as evidence in a hearing under [Policy 1346](#), the witness must be present at the hearing and submit to cross examination by answering all relevant questions posed by the complainant, respondent, and hearing board.

## Investigative Report

Upon completion of evidence collection and interviews, the investigator will draft an investigative report which will be sent to the complainant, respondent, and their respective advisors of choice. The investigative report will include all evidence collected by and submitted to the investigator, a summary of all relevant evidence, and a timeline of procedural steps taken by the investigator and Title IX Office from receipt of the formal complaint forward. The investigative report will not include any findings or recommendations.

### Final Response and Completion of the Investigation

The complainant and respondent will have 10 days from the date the investigative report is considered received, to submit to the investigator a final written response for inclusion in the investigative report.

The investigator will include the complainant and respondent's final responses in the investigative report along with an updated timeline of procedural steps taken, and will send the report to the complainant, respondent, their respective advisors of choice, and the university authority responsible for the adjudication of formal complaints. The investigation will be considered completed.

The Title IX Office will retain a copy of the investigative report for a period of at least seven years.

If there is a two way no contact order in effect, it will remain in effect until the established expiration date.

The Title IX Office will continue to provide reasonably available supportive measures and referrals for supportive measures available through other university offices and the community to the complainant and respondent.

The investigator who conducted the formal complaint investigation will generally participate as an administrative witness in hearings under these procedures.