

Catamount School Title IX Sexual Harassment Policy

I. Introduction

The Catamount School (School) and Western Carolina University (University) acknowledge the dignity and worth of all students and employees and strives to create a safe, orderly, caring, and inviting school environment to facilitate student learning and achievement. The purpose of this policy is to support the School's commitment to providing an institutional environment free from Title IX Sexual Harassment, as well as to provide an administrative framework & oversight for reporting, investigating, adjudicating, and resolving violations of this policy.

II. Scope

- A. This policy applies to all members of the School community, including students, employees, board members, volunteers, visitors, and others who participate in programs, activities, or conduct business on behalf of the School. "Visitors" include parents and other family members, individuals from the community, vendors, contractors, and other persons doing business with or performing services on behalf of the School.
- B. This policy applies to incidents of Prohibited Conduct when at least one student is a complainant or respondent.
- C. This policy does not apply in instances when a student is not a complainant or respondent. For sex-based misconduct or retaliation for non-students, please refer to WCU Policy 119 "Title IX Sexual Harassment" and Policy 53 "Unlawful Discrimination."
- D. This Policy applies to behavior that takes place in any education program or activity in the U.S, including locations, events, or circumstances where the School exercises substantial control over both the respondent and the context in which the alleged behavior occurs.

III. Definitions

- A. Advisor - A person chosen by a Party, or appointed by the School, to accompany the Party to meetings related to the grievance process, and advise and assist the Party throughout the process.
- B. Complainant - Any person who has alleged to be the victim of conduct that could constitute Title IX Sexual Harassment, including a parent on behalf of their child.
- C. Consent - For consent to be present, it must be knowing and voluntary, with clear permission, by word or action, to engage in sexual activity
 - 1. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific conduct.
 - 2. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that activity must cease.
 - 3. Consent to some contact when permitted cannot be presumed to be

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- consent for other activity.
4. Proof of consent or non-consent is not a burden placed on either Party involved in an incident. Instead, the burden remains on the School to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances.
- D. Decision-Maker - The Principal or designee will be the Decision-Maker for all formal grievances under this policy, unless a conflict is determined in which case the Title IX Coordinator will appoint a Decision-Maker.
- E. Formal Complaint - means a document filed by a Complainant or signed by the Title IX Coordinator alleging conduct in violation of this Policy against a Respondent and requesting that the University investigate the allegation. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the school.
- F. Investigator-An individual charged by the Title IX Coordinator with gathering testimonial and documentary evidence about an alleged violation of this policy and compiling the information into an investigation report.
- G. Respondent - Any individual who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment.
- H. Party or Parties - A reference to a Complainant(s) and Respondent(s), either separately or collectively.
- I. Title IX – Refers to Title IX of the Education Amendments Act of 1973. Title IX is a federal civil rights law codified at 20 U.S. Code §§ 1681-1688, and accompanying Federal Regulations at 34 CFR § 106.
- J. Title IX Coordinator -The person who oversees the implementation and administration of this policy. The School shares a Title IX Coordinator with WCU.

IV. Prohibited Conduct

All members of the School community are prohibited from engaging in Title IX Sexual Harassment (collectively referred to in this policy as “Prohibited Conduct”).¹ The following conduct identifies categories of Prohibited Conduct:

¹ The Catamount School will address allegations of other types of sexual harassment (i.e., that do not meet the definition of Title IX Sexual Harassment) and retaliation by: (1) using other student and employee conduct disciplinary procedures; and/or (2) with Supportive Measures, which are defined and discussed in more detail herein.

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A. Title IX Sexual Harassment, includes:

1. 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 School's Education Program or Activity; or
2. Quid Pro Quo Sexual Harassment, defined as, an employee of the School conditioning the provision of an aid, benefit, or service of the School on an individual's participation in unwelcome sexual conduct; or
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

(Students shall not engage in sexual or intimate conduct at school. In instances where students are both the Complaint(s) and Respondent(s), and it is identified that the Complainant(s) has provided consent and capable of providing consent, then the matter will be addressed pursuant to the School's Student Behavior policy and Code of Conduct)

V. Reporting

Any person who believes they have been discriminated against or harassed in violation of this policy, or retaliated against for activities protected under this policy, by an individual that falls under the scope of this policy should inform the Title IX Coordinator or any other school official designated to receive such complaints.

Reports of Prohibited Conduct, by all individuals, may be made by contacting the School Principal or Title IX Coordinator by email or phone referenced below

VI. Mandatory Reporter

All employees are considered "Mandatory Reporters." Upon receiving any information that may indicate the occurrence of Prohibited Conduct involving a student, Mandatory Reporters are required to report the information to the School Principal or Title IX Coordinator as promptly as possible, but in no event after seventy-two (72) hours. Mandatory Reporters may also be referred to as "Responsible Employees."

Employees who observe an incident of Prohibited Conduct are expected to intervene and stop the conduct in situations where they have supervisory control over the Respondent and it is safe to do so.

If an employee knows of an incident involving Prohibited Conduct and the employee fails to report the conduct, take proper action, or knowingly provides false information in regard to the incident, then the employee's actions may result in disciplinary action, up to and including termination.

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VII. Anonymous Reporting

Except for Mandatory Reporters, individuals may make anonymous reports concerning Prohibited Conduct.

VIII. Responding to Reports

The Title IX Coordinator or designee shall be responsible for ensuring that each Formal Complaint or notice of an alleged violation of Prohibited Conduct is responded to promptly.

IX. Supportive Measures

The Title IX Coordinator or designee will reach out to students and employees who fall under the scope of this policy and may have experienced Prohibited Conduct. Individuals will be offered resources, options for reporting, and supportive measures.

Supportive Measures are non-disciplinary and non-punitive individualized services offered as appropriate, as reasonably available without fee or charge, to the Complainant or the Respondent. Supportive measures may be offered before or after the filing of a Formal Complaint, as well as when no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the School's Education Program or Activity without unreasonably burdening the other Party. Additionally, supportive measures include measures designed to protect the safety of all Parties and the School's educational environment.

Examples of supportive measures may include: counseling; extensions of deadlines or other course-related adjustments; modifications of work or class schedules; school escort services; mutual restrictions on contact between the Parties; changes in work or housing locations; leaves of absence; increased security and monitoring of certain areas of the School; and other similar measures. Supportive measures may include referrals to both confidential and private resources.

The School will maintain as confidential any supportive measures provided to the Complainant or Respondent to the extent that maintaining such confidentiality would not impair the ability of the institution to provide supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Supportive measures will be offered to individuals involved in reports of Prohibited Conduct whether or not they file a Formal Complaint.

X. Emergency Removal

In relation to alleged violations of this policy, a Respondent can be removed entirely or partially from Education Program or Activities on an emergency basis. An individualized safety and risk analysis must be performed that indicates an immediate threat to the physical health or safety of any student or other individual. The Title IX Coordinator or designee in conjunction with the School Principal will perform the safety and risk analysis using standard risk assessment processes to decide if an emergency removal is appropriate. Respondents will be presented with an opportunity to challenge and appeal any decisions of an emergency removal. Appeals for emergency removal should be submitted to the Title IX Coordinator. The Title IX Coordinator will assign an administrator to review the appeal who was not

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involved in the initial assessment of emergency removal. All decisions made after the appeal of the emergency removal are final.

XI. Filing a Formal Complaint

The Title IX Coordinator or designee is responsible for receiving Formal Complaints from a Complainant. There are only two circumstances where a Formal Complaint will proceed through a formal grievance process:

- A. **Formal Complaint Filed by a Complainant.** A Complainant may submit a Formal Complaint to the Title IX Coordinator alleging Prohibited Conduct against a Respondent. Upon receipt of a Formal Complaint, the Title IX Coordinator or designee will review all supportive measures and resolution options with the Complainant and their Advisor, and determine if an Investigation is the most appropriate means to address the complaint. An investigator will investigate the allegation(s) if there are no procedural grounds for dismissal or an informal resolution.

- B. **Formal Complaint Signed by the Title IX Coordinator.** The Title IX Coordinator has the discretion over whether to sign a Formal Complaint and proceed with a formal grievance process when the Complainant does not wish to file a Formal Complaint. In deciding, the Title IX Coordinator will evaluate the situation in light of the duty to ensure the safety of the School and to comply with federal and state law. The Title IX Coordinator will also consider the effects on the availability of evidence and the School's ability to pursue a formal grievance fairly and effectively. The School's ability to remedy and respond to notice may be limited if the Complainant' does not want the School to proceed with the grievance process.

XII. Proceeding with a Formal Complaint

- A. **Dismissal of a Formal Complaint.** A decision by the Title IX Coordinator to dismiss a Formal Complaint before instituting a formal grievance is appealable by any Party under the procedures for appeal below. A Complainant who decides to withdraw a Formal Complaint may later request to reinstate it or refile it. Upon any dismissal, the School will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Parties.

- B. **Mandatory Dismissal.** The School must dismiss a Formal Complaint, if at any time before or during the investigation, if it is determined that:
 - 1. the conduct alleged in the Formal Complaint would not constitute Prohibited Conduct as defined within this policy, even if proved; or
 - 2. the conduct did not occur in an educational program or activity; or
 - 3. the conduct did not occur against a person in the United States; or
 - 4. at the time of filing a Formal Complaint, the conduct did not occur within the scope of this policy.

However, if a formal complaint is dismissed under Title IX it may be investigated and adjudicated under other School policies and procedures.

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- C. **Discretionary Dismissal.** The School, at the sole discretion of the Title IX Coordinator, or designee, may dismiss a Formal Complaint, if at any time during the investigation:
1. a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or
 2. the Respondent is no longer enrolled in or employed by the School, as applicable; or
 3. specific circumstances prevent the School from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
- D. **Rights Reserved to the School.** Dismissing a Formal Complaint under Title IX is solely a procedural requirement under Title IX and does not limit the School's authority to address a complaint with an appropriate process or remedy consistent with other School policies.

XIII. Notice of Investigation

If it is determined that an investigation will be initiated, then an Investigator will be assigned and Parties will receive a notice of investigation.

XIV. Advisors

The Parties may have up to two (2) Advisors of their choice who may, but are not required to, be an attorney. An Advisor may be present during interviews; however, they are not permitted to speak or ask questions during interviews. Parties are required to respond for themselves.

The Complainant retains all rights and status as a Complainant irrespective of their level of participation.

XV. Informal Resolutions

The Title IX Coordinator may facilitate an informal resolution between the Parties after a Formal Complaint has been filed. A Party who wishes to initiate an informal resolution after a Formal Complaint has been filed should contact the Title IX Coordinator.

The School will obtain voluntary, written confirmation that all Parties wish to resolve the matter through informal resolution before proceeding and will not pressure the Parties to participate in informal resolution.

Any Party participating in an informal resolution can stop the process at any time and begin or resume the formal grievance process. Additionally, an informal resolution may be entered at any time before a determination of responsibility has been made by the School.

XVI. Respondent Acceptance of Full Responsibility

The Respondent may accept responsibility for all or part of the alleged policy violations at

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any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether informal resolution can be used.

If informal resolution is applicable, the Title IX Coordinator will determine whether all Parties and the School can agree on responsibility, sanctions, and/or remedies. Upon agreement of the Parties, the Title IX Coordinator or designee, in collaboration with the appropriate administrative official(s), will implement a Finding that the Respondent is in violation of Prohibited Conduct and the agreed-upon sanctions or remedies.

This result of an informal resolution is not subject to appeal once all Parties indicate their written assent to all agreed-upon terms of the resolution. When the Parties cannot agree on all terms of resolution, the formal grievance process will resume at the same point where it was paused.

XVII. Investigations and Questioning of Other Party

Investigations will be conducted by trained Investigators. After a final investigative report is provided to the Parties and the Decision-Maker, the Decision-Maker will afford the Parties ten (10) business days after receipt of the investigative report, an opportunity to:

- submit written, relevant questions that a Party wants asked of any Party or witness;
- provide each Party the answers; and
- allow for additional, limited follow-up questions for each Party.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior 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.

XVIII. Determination Regarding Responsibility

After receipt of the investigative report and submission of questions and answers, the Decision-Maker will review the investigative report, the accompanying evidence, and the submission of questions and answers that were received after the final investigative report was provided to the Parties.

After this review the Decision-Maker will render a written determination regarding responsibility that complies with Title IX, which shall include a determination of sanctions, if applicable. The Decision-Maker in their discretion may meet individually with the Parties and their Advisors before rendering a decision on responsibility and sanctions.

XIX. Appeal

- A. **Appeal of Finding of Responsibility.** Appeals must be written and submitted to the Title IX Coordinator or designee within five (5) business days of receiving the Decision-Maker's written determination. Appeals must include a rationale and supporting evidence for any of the grounds for appeals listed

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below.

- B. **Grounds for Appeals.** The Complainant or Respondent may appeal the Decision Maker's determination of responsibility or decision to dismiss the Formal Complaint on any of these three bases: (1) procedural irregularity that affected the outcome of the matter; (2) 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; or (3) the Title IX Coordinator, Investigator(s), or Decision- Makers) had a conflict of interest or bias for or against Complainants or Formal Complaints generally or the individual Complainant or Formal Complaint that affected the outcome of the matter.
- C. **Decision Regarding Appeals of Responsibility.** WCU's Dean of the College Education and Allied Professions will serve as the appeal officer.
- D. **Sanctions During Pendency of Appeals.** Sanctions shall not be imposed during the pendency of any appeal.

XX. Retaliation

The School will take all appropriate and available steps to protect individuals who fear that they may be or have been subjected to Retaliation. Retaliation is any adverse action against an individual, or an individual's spouse, partner, or other person with a close personal relation, for: (a) making or supporting a claim of Title IX Sexual Harassment, (b) opposing any Title IX Sexual Harassment, (c) participating in the reporting, investigation, or resolution of alleged violation(s) under this policy, or (d) otherwise engaging in a protected activity under School associated policies. Examples of Retaliation include intimidation, threats, coercion, or adverse employment or educational actions.

Acts of alleged Retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated.

XXI. Title IX Coordinator

The following individual will coordinate the School's efforts to comply with and carry out its responsibilities under federal non-discrimination laws. These responsibilities include investigating any complaints communicated to school officials alleging noncompliance with Title IX, or alleging actions which would be prohibited by this law.

Title IX Coordinator
Ivy Gibson
Associate General Counsel Western Carolina University
Igibson@wcu.edu
828-227-7116