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Title IX Sexual Harassment Policy

Initially approved August 4, 2020 (Effective August 14, 2020)

Technical Change: September 20, 2022

Policy Topic: Legal and Risk Management

Authority: Chancellor

Administering Office: Legal Counsel Office

IF YOU ARE IN AN EMERGENCY SITUATION, GO TO A SAFE LOCATION AND CALL 911.

Anyone who suspects criminal activity should first call the University Policy Department at 828.227.8911, for emergencies or 828.227.7301 for non-emergencies

Individuals may report sexual harassment occurring in any education program or activity by calling the Title IX Coordinator at 828.227.7116.

I. Policy Statement on Title IX Sexual Harassment

Sexual harassment under Title IX of the Civil Rights Act of 1964 (Title IX) constitutes unlawful discrimination based on gender and threatens the University's culture of civility and mutual respect. Western Carolina University (University or WCU) is committed to creating and maintaining an environment that is free of Title IX Sexual Harassment and that promotes a healthy spirit of responsibility, dignity, and respect in matters of sexual conduct and interpersonal relationships. It is the policy of the University that its employees, visitors, and students should be free from Title IX Sexual Harassment within any education program or activity.

The University reaffirms its commitment to academic freedom in accordance with the First Amendment of the United States Constitution and the policies of the University of North Carolina. Where it is an integral and legitimate part of course content, the pedagogical discussion of sexual ideas, taboos, behavior or language is reasonable and shall in no event constitute Sexual Harassment. While the discussion of opinions and ideas

related to sexuality may cause some individuals discomfort. It is recognized that academic freedom ensures the



Title IX

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II. Application and Scope

This Policy applies to all allegations of Title IX Sexual Harassment by students, visitors, or employees within any educational program or activity. An education program or activity includes locations, events, or circumstances over which WCU exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

III. Title IX Sexual Harassment Defined

“Sexual Harassment” means conduct on the basis of sex that satisfies one or more of the following:

- a. Quid pro quo- an employee of the respondent conditioning the provision of an aid, benefit, or service of the respondent on an individual’s participation in sexual conduct;
- b. 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
- c. “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)(11), “domestic violence” as defined in 34 U.S.C. 12291(a)(12), or “stalking” as defined in 34 U.S.C. 12291(a)(36).

IV. Title IX Coordinator

1. Introduction: The Title IX Coordinator is the University’s primary employee who oversees the University’s centralized response to and compliance with Title IX.
2. Duties: The Title IX Coordinator’s duties include (but are not limited to):

- communicate with all members of the University community regarding Title IX and provide



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conduct training regarding this and promote conduct defined in this policy, and

- respond to any complaint or report regarding conduct that violates this policy. In this capacity, the Title IX Coordinator oversees the investigation and resolution of such alleged misconduct, directs the provision of any remedial measures, and monitors the administration of any related appeal;
- designate Responsible Employees pursuant to this Policy; and
- appoint Title IX Board members and arrange for them to receive annual training.

3. Contact Information:

Deidre Hopkins, Title IX Coordinator

Phone: 828-227-7116

Email: dshopkins@email.wcu.edu [<mailto:dshopkins@email.wcu.edu?subject=>]

Website: <https://www.wcu.edu/discover/leadership/office-of-the-chancellor/legal-counsel-office/TitleIX-Office/index.aspx>

V. Title IX Sexual Harassment Adjudication Process

1. Reporting and Formal Complaints

a. Reporting:

- i. Reporting Options: Information concerning a violation of this Policy may be directed to the Title IX Coordinator, University Police, a Responsible Employee, or the United States Office for Civil Rights at OCR.DC@ed.gov or [\(202\) 453-6020](tel:(202)453-6020). A Report made to these individuals shall be reviewed by the Title IX Coordinator.
- ii. Anonymous Reporting: Any individual may make an anonymous Report of conduct prohibited by this Policy to the Title IX Coordinator, University Police, a Responsible Employee, or the Office for Civil Rights without disclosing their name, without identifying the Respondent, and/or without requesting any action. However, the University's ability to respond to an anonymous Report may be limited depending on the level of information available regarding the incident or individuals involved. All anonymous Reports made to these individuals shall be reviewed by the Title IX Coordinator.

h. Formal Complaint: To initiate the Title IX Grievance Process, a Complainant must file a Formal



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Formal Complaint, both the Complainant and Respondent shall be informed of the Title IX Decision-Maker is.

- c. Confidentiality: Where a formal complaint has not been filed by the Complainant or signed by the Title IX Coordinator, the University may honor requests for confidentiality, unless disclosure of identity is necessary to provide a particular supportive measure or to provide a safe and non-discriminatory environment to all members of the University community.

The University cannot withhold Complainant's name from the Respondent once the University takes action that affects the Respondent.

- d. Advisor(s): The Complainant and Respondent may have an advisor of their choice present during any meeting or proceeding related to complaint resolution procedures under this Policy, including meetings related to investigation of the formal complaint. If a party does not have an advisor present at the Title IX Grievance Hearing, the University must provide one without fee or charge to that party, an advisor of the University's choice.
- e. Emergency Removal and Administrative Leave: The University may determine that Emergency Removal or Administrative Leave (Removal) is necessary to ensure a safe and nondiscriminatory environment for the University Community. The Respondent may be removed from a University program, including the suspension of job-related activities, educational program, or other activity on an emergency basis, provided that the University undertakes an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of a member of the University community arising from the allegations of a Policy violation justifies the Removal. The Respondent will be provided notice of the Removal and will be provided an opportunity to appeal the decision, within 48 hours, via a written statement submitted to the Title IX Coordinator.
- f. Conflict of Interest and/or Bias: No individual designated by the University as a Title IX Coordinator, University Investigator, Decision-Maker, or any person designated to facilitate an informal resolution process shall have a conflict of interest or bias for, or against, Complainant(s) or Respondent(s). In the event that a conflict of interest or bias is shown to exist, the individual shall recuse themselves or may be removed pursuant to this Policy and Procedure.
- g. Timelines:
- i. Formal Investigation: The University will make every effort to complete a Formal Investigation within thirty (30) days of its referral to an Investigator pursuant to this Policy and Procedure.

ii. Resolution: The University will make every effort to ensure that a typical case, starting with the



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Complainant and Respondent that explain the reason for the extension or delay.

- h. Supportive Measures: Complainant; any individual making a report or filing a Formal Complaint; and/or Respondent shall be informed of Supportive Measures by the Title IX Coordinator, or designee.
- i. Witnesses: The University Investigator(s) is authorized to contact any individual(s) that the University Investigator deems relevant and request that they participate in the investigation. It shall be the responsibility of the party who wishes to question any witness to ensure that the witness appears and participates in any Title IX Grievance Hearing.

- 2. Receipt of Report: The Title IX Coordinator, or designee, shall initiate a cursory review of allegations and/or information found in a Report. At the conclusion of this cursory review, the Title IX Coordinator, or designee, shall make a determination based on this Policy and Procedure, whether the allegations, if proved, would constitute Title IX Sexual Harassment, and to offer the Complainant the opportunity to file a Formal Complaint.
- 3. Title IX Grievance Process: In order to initiate the Title IX Grievance Process a Formal Complaint must be submitted pursuant to this Policy and Procedure. The University must investigate allegations found in a Formal Complaint which meets the requirements of this Policy and Procedures.

The Title IX Grievance Process may result in the following outcomes:

- a. Respondent Separates from the University: A Respondent may separate from the University prior to the conclusion of the Title IX Grievance Process. In the event that a Respondent separates from the University prior to the conclusion of the Title IX Grievance Process, the University reserves the right to continue the Title IX Grievance Process, hold the Title IX Grievance Process in abeyance unless and until the Respondent returns to the University, or apply other action as warranted by the situation and permitted by this Policy and Procedure.
- b. Informal Resolution: Informal resolution of a properly filed Formal Complaint is only available when both the Complainant and Respondent agree to engage in an informal resolution. Informal resolution of a Formal Complaint is not an option if the Complainant is a student and the Respondent is an employee.
- c. Dismissal by University: While the University must investigate any allegation contained in a Formal Complaint, the University must dismiss a Formal Complaint if the alleged violation did not occur in the



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d. Formal Resolution: The Formal Resolution process shall encompass a Formal Investigation, Title IX Grievance Hearing, as well as any appeals requested by the parties pursuant to this Policy and Procedure.

i. Investigation: The Title IX Coordinator shall appoint one or more University Investigators who will investigate the Formal Complaint in a prompt, fair, thorough, and impartial manner. The University Investigator(s) shall have the authority to interview witnesses; gather evidence, not protected by confidentiality or privilege; and speak with the Complainant and Respondent. The University Investigator(s) shall prepare a written report which will be presented to the Title IX Coordinator, who will determine if the information gathered over the course of the investigation supports a Title IX Grievance Hearing. The Title IX Coordinator may dismiss the Formal Complaint pursuant to this Policy and Procedure.

ii. Title IX Grievance Hearing: A live hearing, in front of a Title IX Board, in which both parties are permitted to provide evidence and question witnesses. The Title IX Grievance Hearing is required and may be conducted with all parties present in the same room, fully virtual, or a hybrid model where the Title IX Board gathers in person and all other parties participate virtually. The University will use its best efforts to ensure that the parties and their advisors can be present for any Hearing.

1. Determination:

- a. Evidentiary Standard: The Preponderance of the Evidence standard must be applied when arriving at a determination of whether a violation of this Policy has occurred in all cases, including those that involve Employees.
- b. All permissible evidence presented at the Title IX Grievance Hearing shall be considered by the Title IX Board which will include an objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, Respondent, or witness.
- c. A majority vote of the Title IX Board is required for the Board to find a Respondent responsible for a violation of this Policy.

2. Record: A record of the Title IX Grievance Hearing shall be kept by the Chair.

3. Sanctions:

a. If the Title IX Board determines a policy violation occurred, the Title IX Board may



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measures for complainants so long as these supportive measures do not unfairly burden or prejudice Respondent.

d. Failure to comply with sanctions may result in additional sanctions pursuant to relevant policy and procedure.

e. In the event that a final sanction results in an suspension or expulsion, the record-keeping and appeal process as described in the student code of conduct shall apply.

4. Notice: The Title IX Board shall provide a Notice of Action informing the parties of the outcome of the Title IX Grievance Hearing, the rationale for the decision, and the sanctions imposed, if any, pursuant to this Policy and Procedure. The Notice of Action shall provide information regarding each party's right of appeal.

iii. Appeal

1. Grounds for Appeal: Either Complainant and/or Respondent may appeal the finding of responsibility or the University's dismissal of a Formal Complaint on the following grounds:

a. Procedural irregularity that affected the outcome of the case;

b. New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome; and/or

c. The Title IX Coordinator, Investigator, or member of the Title IX Board had a general or specific conflict of interest or bias against the complainant or respondent that affected the outcome.

2. Filing an Appeal: Either party may file a written appeal within seven (7) calendar days, including the weekends but not including University holidays or days that the University is not in session to the Appeal Officer, which must state in detail the reason(s) for the appeal. Upon appeal, any sanction shall be stayed until the conclusion of the appeal.

3. Procedure: The University shall appoint an Appeal Officer who will review the appeal and make a determination.

4. Notice of Outcome: The Appeal Officer will provide a written Notice of Outcome within ten (10) business days from the date of review for consideration, and this decision is final, marking the conclusion of the matter.

4. Retaliation: No person shall be subject to restraints, interference, coercion, or reprisal for action taken in good faith to seek advice concerning an alleged violation of this policy, to file a report, to initiate the Western Carolina University's internal complaint resolution process, or to serve as a witness, Board



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The SHPC shall be comprised of the following members:

- a. Title IX Coordinator, who shall serve as chair;
 - b. Deputy Title IX Coordinators not otherwise listed;
 - c. Clery Act Coordinator;
 - d. Chief Diversity Officer;
 - e. Associate Vice Chancellor for Student Affairs/Dean of Students;
 - f. Assistant Vice Chancellor for Health and Wellness;
 - g. Director of Counseling and Psychological Services;
 - h. Director of Employee Relations;
 - i. University Police Victim Services Sergeant;
 - j. Director of the DSCE;
 - k. Representative from the Department of Athletics appointed by the Athletic Director;
 - l. A member from the General Counsel's office;
 - m. A student member appointed by the President of the SGA;
 - n. A faculty member appointed by the Provost.
2. The SHPC shall establish such sub-committees as may be necessary to accomplish its objectives and responsibilities. Membership of such sub-committees may include, at a minimum, faculty representatives appointed by the Provost and student representatives appointed by the Vice Chancellor for Student Affairs or his/her designee.
3. The SHPC shall have the following responsibilities:
- a. Serve as an advisory body to the Chancellor on matters pertaining to sexual harassment and related campus safety;
 - b. Assist in the development of and recommend policies and implementing procedures regarding sexual harassment and related campus community safety, compliance with applicable state and federal laws and regulations, including Title IX, Clery Act, and the Violence Against Women Reauthorization Act of 2013, and compliance with University of North Carolina policies and directives;
 - c. Assist in the development and delivery of training and professional development for employees;
 - d. Assist in the development and delivery of information and programming for students, particularly in the areas of awareness and primary prevention, safe and effective intervention strategies, factors that contribute to sexual violence such as alcohol and drugs, and diversity and inclusion;



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Procedures - Combined

VIII. Other Resources

On Campus Immediate Assistance Options

Off Campus Immediate Assistance Options

On Campus Confidential Resources

Off Campus Confidential Resources

Title IX Training Material

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.,

Title IX implementing regulations, 34 C.F.R. Part 106

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) (“the “Clery Act”)

Clery Act implementing regulations, 34 C.F.R. Part 668).

To find a current list of Responsible Employees, click on this link: <https://www.wcu.edu/discover/campus-services-and-operations/university-police/clery-act/CampusSecurityAuthority.aspx>
