



Hiwassee College

Policy Directive

TITLE: Title IX Policy and Policy on Sexual Misconduct

ORIGINATING OFFICE: Office of the Vice President Enrollment Management

REVIEW DATE: March of Each Year

Purpose: To establish a written policy on Title IX procedures and sexual misconduct that covers all Hiwassee College students, faculty, and staff.

Policy: Hiwassee College is committed to maintaining an environment that is free of unlawful harassment and discrimination. Thus, in accordance with federal law and its commitment to a fair and open campus environment, Hiwassee College cannot and will not tolerate discrimination against or harassment of any individual or group based upon race, sex, color, religion, ethnic or national origin, gender, genetic information, age, disability, sexual orientation, gender identity, gender expression, veteran's status, or any factor that is a prohibited consideration under applicable law.

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is an all-encompassing federal law that prohibits discrimination based on the gender of students and employees of educational institutions which receive federal financial assistance. Hiwassee College fosters a safe learning and working environment that supports academic and professional growth of students, staff, and faculty and does not tolerate sexual misconduct in its community and will take prompt action when misconduct occurs.

This policy covers Title IX policies and sexual misconduct committed against Hiwassee College students by Hiwassee College students, faculty, or staff. Sexual misconduct is a form of sexual harassment that is prohibited under federal law and the Hiwassee College Policy on Affirmative Action (PD 1901). Sexual misconduct can occur in many forms including, but not limited to, sexual harassment, domestic violence, dating violence, intimate partner violence, sexual assault, and stalking.



The College will take seriously every allegation or report of sexual misconduct received. Hiwassee College's response is intended to ensure that all parties involved receive appropriate support and fair treatment, and that allegations of sexual misconduct are handled in a prompt, thorough, and equitable manner.

Procedures:

1) Reporting Sexual Misconduct

a) Reporting to the Police: Because sexual misconduct may constitute both a violation of College policy and criminal activity, persons having knowledge of a possible violation are strongly encouraged to report alleged sexual misconduct promptly to Hiwassee College Security, or to local law enforcement authorities for incidents that occur off campus. The College strongly encourages those who have been sexually assaulted to report the assault, to seek assistance, and to pursue judicial action for their own protection and that of the entire campus community.

i) Confidential reporting through Hiwassee College Security and/or the Title IX Coordinator is an option; however, such reporting will limit the effectiveness of investigation by college officials and/or law enforcement. Regardless of the mode of reporting, the College will investigate the incident in question and take appropriate responsive action to ensure the safety and well-being of the members of the Hiwassee College community.

ii) If a complainant does not wish to, or cannot report an assault, Hiwassee College encourages other persons with knowledge of an alleged assault to make a report to Hiwassee College Security and/or the Title IX Coordinator.

iii) Pursuant to Tennessee's law on mandatory reporting of child abuse and child sexual abuse, Hiwassee College requires all Hiwassee College personnel, including faculty, staff, students, and third-parties to report suspected child abuse of which they are made aware in their capacity of employment or duties. child abuse includes sexual abuse or exploitation of a person who is under eighteen (18) years old¹.

b) Reporting Sexual Misconduct for College Action: Every College employee who is informed about an allegation of sexual misconduct involving any student is required to notify the Title IX Coordinator directly. However, there may be areas where certain individuals (e.g., pastoral counselors, or medical providers) are not bound by this requirement, but may be required to report limited information about incidents without revealing the identities of the individuals involved, to the Title IX Coordinator.

¹ [1] In Tennessee, statutory rape is sexual penetration of a victim by the defendant or of the defendant by the victim when the **victim is** at least thirteen (13) but **less than eighteen (18) years of age** and the defendant is at least four (4) years older than the victim. See Tennessee Code § 39-13-506, Statutory Rape.



i) Complaints under this sexual misconduct policy may be filed with the Hiwassee College Title IX Coordinator. In the absence of the Title IX Coordinator, complaints may be filed with the Vice President of Enrollment Management. The complaint may be made in a written or verbal format.

ii) Retaliation Prohibited: Federal regulations and College policy protect against retaliation directed at any individual who files a complaint or is involved in this policy's investigation and adjudication process.

2) Investigation and Adjudication

a) Title IX Coordinator Responsibility: The Title IX Coordinator is primarily responsible for coordinating responses to complaints of possible violations of this policy, directly overseeing the investigation and determining the procedural outcome of the investigation, with an end-goal to minimize the recurrence of the alleged conduct as well as mitigate the effects of the harassment. The Title IX Coordinator will ensure prompt, fair, and impartial investigations and resolutions of complaints alleging violations of this policy. In most cases, an investigation will be completed within 30 days; however, a longer period may be needed in some more complex cases.

i) If the complainant requests or the College at any time determines any need to have the case investigated for criminal violations, the case will be immediately forwarded to the appropriate law enforcement agency for review.

ii) The procedures for institutional investigation will be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking. The officials, who are members of the Hiwassee College community, will handle matters under this policy promptly and equitably.

iii) When conducting the investigation, the College's primary focus will be addressing the alleged sexual assault without regard to other conduct code policies which may otherwise be involved. It is understood that someone who may have been involved in other activities (i.e. consumption of alcohol or drugs) which might lead to conduct code violations may resist reporting sexual misconduct. An individual who reports sexual misconduct either as a complainant or witness, will not be subject to disciplinary action by the College for personal consumption of alcohol or drugs at or near the time of the incident, as long as no criminal activity was involved.

iv) The filing of a sexual misconduct complaint under this policy is independent of any criminal investigation or proceeding. A College investigation does not depend upon the conclusion of any criminal proceedings to commence its own investigation and take needed interim measures, unless such would impede a criminal investigation or proceeding.

b) Investigation of a Complaint and Outcomes



i) Title IX Coordinator appoints three (3) independent investigators trained according to 2) a) ii) above to conduct a prompt, thorough, and impartial investigation of the complaint.

ii) The investigation may involve interviews, collection of evidence or other information or other physical/electronic information.

iii) Prior to any interview, the subject shall be advised that the matter is confidential and that retaliation is prohibited by this policy.

iv) Although the wishes of the complainant should be respected, investigators have independent authority to conduct an investigation as best determined by the investigator(s).

v) With the exception of being interviewed, neither complainants or respondents shall participate in the investigation.

c) Input from the Complainant Regarding the Method of Resolution: Early on in the investigation, the Title IX Coordinator will seek to determine how the complainant wishes to proceed – whether the complainant wishes to pursue a formal resolution, seeks to resolve the allegation informally, or does not wish to pursue resolution of any kind. The wishes of the complainant are to be taken into consideration in the determination, but shall not constitute the determination in its entirety.

d) Authority to Impose Interim Restrictions and Provide Accommodations: In the period from reporting to adjudication, the Title IX Coordinator may issue interim restrictions, including, but not limited to, the following:

i) no-contact or stay away orders between the complainant and the respondent,

ii) interim suspension or temporary exclusion from areas of campus,

iii) removal from or relocation to another residence hall,

iv) changes in academic/course schedules or limiting participation in certain events, gatherings, or activities, among other measures.

v) Interim measures should not be construed to suggest that any decision has been made about the merits of the cases.

(vi) Appeals must be submitted in writing to the Hiwassee College Title IX Coordinator within 7 days from the day the parties are notified about the interim restriction. The Title IX Coordinator will review the materials within 5 days of receipt of the appeal and may affirm the original restriction, modify the restriction, which may be of greater or lesser severity, or dismiss the original restriction. The Title IX Coordinator's determinations on appeals of any interim restrictions are final and not appealable. Both parties shall receive simultaneous written notice of the outcome of the appeal.

vii) Accommodations may be provided to individuals involved, on a case-by-case basis, by the Title IX Coordinator in conjunction with the appropriate area vice presidents.



e) At the conclusion of the review, the investigators will:

i) Submit a written report of findings to the Title IX Coordinator detailing the information that was collected. The Title IX Coordinator may ask further clarification of questions of the complainant, respondent, or witnesses to supplement the report of findings.

ii) The Title IX Coordinator shall review the report of findings, the stated wishes of the complainant, and in consultation with the Vice President of Enrollment Management determine the appropriate procedural path to follow.

3) Procedural Paths Following Completion of Investigation

a) No Charges: Based on the entirety of the circumstances, no finding of probable cause exists, and the investigation is closed with no further action.

b) Informal Resolution: Based on the entirety of the circumstances and in consultation with the complainant, the Title IX Coordinator may select an appropriate informal resolution amenable to both the complainant and respondent. Both the complainant and respondent (except in cases where the respondent is unknown, is not covered by this policy, or the complainant has asked to remain anonymous) will be notified in writing and a copy of the investigation and documentation supporting this decision will be sent by the Title IX Coordinator.

c) Formal Resolution: A review is conducted by the appropriate disciplinary process applicable to the responding party(s) (student or employee):

i) For Employee respondents: Within 5 days of receipt of the report of the outcome of the investigation, the Vice President for Business Affairs will implement appropriate disciplinary action, up to and including termination, for the employee. The decision of the Vice President for Business Affairs will be shared simultaneously with both the complainant and responding party. A copy will be sent to the Title IX Coordinator for review.

ii) For Student respondents: Within five days, the Title IX coordinator will file a formal complaint for adjudication with the Director of Student Affairs in accordance with the Policy on Due Process and Student Code of Conduct (PD 8102).

d) Privacy and Confidentiality: Hiwassee College will follow the law in protecting the complainant's and respondent's privacy, including publicly available records, and will withhold the complainant's identity to the extent permissible by law.

4) Appeals

a) Appeals of decisions within the framework of a formal resolution will be handled in accordance with the relevant section in the Policy on Due Process and Student Code of Conduct (PD 8102).



5) Support Services and Options for Students going Through the Sexual Misconduct Process

a) A variety of support resources are available on campus and in the community to assist students in dealing with sexual or dating violence, whether it happened recently or in the past. Consultation and information can be given by the Title IX Coordinator, the Director of Student Affairs, and is available on the Hiwassee College website.

6) Contact Information

All Emergencies (any campus/location): 9-1-1

Campus Security: Darrell Buckalew: 423-333-8066

Ted Webb: 423-337-1327, 931-993-6600

Title IX Coordinator: Makhaila Woodlief

Phone: (423) 545-9582

E-mail: mabrown12@hiwassee.edu

Definitions

Allegation: A statement by a complainant that an act of sexual misconduct has occurred.

Coercion: Coercion is inappropriate pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another.

When a person makes clear that they do not want sex, wants to stop, or that going past a certain point of sexual interaction is unwanted, continued pressure beyond that point can be considered coercion.

Complainant: The person making an allegation or complaint of sexual misconduct.

Complaint: A formal notification, either orally or in writing, of the belief that sexual misconduct has occurred.

Consent: Consent is clear, unambiguous, and voluntary agreement between participants to engage in specific sexual activity. Consent is active, not passive, and is given by clear actions or words. Consent may not be inferred from silence, passivity, or lack of active resistance alone. A current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity. Being intoxicated does not diminish one's responsibility to obtain consent. In some situations, an individual may be deemed incapable of consenting to sexual activity because of circumstances or the behavior of another, or due to their age². Examples of such situations include, but are not

² In Tennessee, statutory rape is sexual penetration of a victim by the defendant or of the defendant by the victim when the **victim is** at least thirteen (13) but **less than eighteen (18) years of age** and the



limited to, incompetence, impairment from alcohol and/or other drugs, fear, unconsciousness, intimidation, coercion, confinement, isolation, or mental or physical impairment.

Dating violence: Violence committed by a person: who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

Domestic violence: A felony or misdemeanor crime of violence committed by: a current or former spouse or intimate partner of the victim, a person with whom the victim shares a child in common, a person who is cohabiting with or has cohabitated with the victim as a spouse or intimate partner, a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Tennessee, or any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Tennessee.

Force: The use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that overcomes resistance or produces consent. There is no requirement that a person has to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

Incapacitation: Incapacity can result from mental disability, sleep, involuntary physical restraint, or from intentional or unintentional taking of alcohol and/or other drugs. An incapacitated person does not have the ability to give knowing consent. Sexual activity with a person who one should know to be – or based on the circumstances should reasonably have known to be – mentally or physically incapacitated, constitutes a violation of this policy. The perspective of a reasonable person will be the basis for determining whether one should have known about the impact of the use of alcohol and/or drugs on another's ability to give consent.

Intimate Partner Violence (IPV): Physical, sexual, or psychological harm by a current or former partner or spouse. This type of violence can occur among heterosexual or same-sex couples, whether cohabitating or not, and does not require sexual intimacy. IPV can vary in frequency and severity, can occur on a continuum, and can include acts of physical violence, sexual violence, threats of physical or sexual violence, or psychological or emotional violence. Psychological or emotional violence is a broad term that results in trauma to a victim caused by acts, threats of acts, or coercive tactics, and can include acts of humiliation, intimidation, isolation, stalking, and harassment.

Non-Consensual Sexual Contact: Any intentional sexual touching by a person upon a person, that is without consent and/or by force. Sexual Contact includes, but is not limited to, intentional

defendant is at least four (4) years older than the victim. See Tennessee Code § 39-13-506, Statutory Rape.



contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice, with any object.

Non-Consensual Sexual Intercourse: Any sexual intercourse by a person upon a person, that is without consent and/or by force. Intercourse includes, but is not limited to, vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

Respondent: Refers to the person against whom the allegation or complaint of sexual misconduct is made.

Sexual Exploitation: Occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to the following: invasion of sexual privacy; prostituting another student; non-consensual video or audio-recording of sexual activity or circulation of such video and video or audio recording; going beyond the boundaries of consent; observing unsuspecting individuals who are partly undressed, naked, or engaged in sexual acts; knowingly transmitting an STI or HIV to another student; exposing one's breasts, buttocks, groin, or genitals, in non-consensual circumstances; inducing another to expose their breasts, buttocks, groin, or genitals; sexually-based stalking and/or bullying may constitute a form of sexual exploitation, as well as a form of sexual harassment, as discussed above.

Sexual Harassment: Unwelcome conduct, based on sex or on gender stereotypes, which is so severe or pervasive that it unreasonably interferes with a person's College employment, academic performance or participation in College programs or activities or creates a working, learning, program or activity environment that a reasonable person would find intimidating, hostile or offensive. Sexual harassment may include, for example, an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention or advances; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence or sexual assault; intimate partner violence; stalking; inappropriate comments; and gender-based bullying.

Sexual Misconduct: Sexual misconduct encompasses sexual harassment, non-consensual sexual contact (or attempts to commit same); non-consensual sexual intercourse (or attempts to commit same), and sexual exploitation. Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can be committed by persons of any gender or sex, and it can occur between people of the same or different sex.

Stalking: Behavior where a person follows, places under surveillance, or contacts another person without the consent of that person for the purpose of harassing and intimidating him or her. The



term “contact” means to make or attempt to make any communication, including, but not limited to, communication in person, by telephone, by mail, by broadcast, by computer or computer network, or by any other electronic device. “Harassing and intimidating” refers to a course of conduct or communications directed at a person that causes the person to suffer emotional distress that would cause a reasonable person to fear for personal safety or the safety of others, and which serves no legitimate purpose. It does not require that an overt threat of death or bodily injury be made.

Student: The term student means any person pursuing academic studies at the College. The term also includes: (1) a person not currently enrolled who was enrolled in the fall, spring, or summer term preceding the alleged violation, or (2) a person who, while not currently enrolled, was previously enrolled in Hiwassee College and who is reasonably anticipated to seek enrollment at a future date, (3) a person who has applied to or been accepted for admission to Hiwassee College and has accepted an offer of admission or may reasonably be expected to enroll, or (4) a person enrolled in an Hiwassee College program on a credit or non-credit basis.