

# WISCONSIN INDIANHEAD TECHNICAL COLLEGE



## ADMINISTRATIVE PROCEDURE: G-113A, J-121A, & J-220A TITLE: [Unlawful Discrimination/Harassment/Sexual Harassment/ Sexual Misconduct/Sexual Violence Complaints](#)

### CROSS REFERENCE(S):

G-111 (Administrative Policy – Disability Accommodation)  
G-111A (Administrative Procedure – Disability Accommodation)  
G-112 & J-120 (Administrative Policy – Non Discrimination/Non Harassment Compliance)  
G-113 & J-121 (Administrative Policy – Unlawful Discrimination/Harassment/Sexual Harassment/Sexual Misconduct/Sexual Violence Complaints)  
G-113B (Administrative Procedure - Unlawful Discrimination/Harassment/Sexual Harassment/Sexual Misconduct/Sexual Violence Complaints Grievance Procedure)  
G-114 & J-114 (Administrative Policy – Sexual Violence Elimination Commitment)  
G-115 (Administrative Policy – Timely Warning Notice and Immediate Notification)  
G-115A (Administrative Procedure – Timely Warning Notice and Immediate Notification)  
J-220 (Administrative Policy – Student Relations)  
Title VI of the Civil Rights Act of 1964  
Title IX of the Education Amendments Act of 1972, as amended  
Section 504 and Section 508 of the Rehabilitation Act of 1973  
Title II of The Americans with Disabilities Act of 1990, as amended  
The Americans with Disabilities Act Amendments Act of 2008  
1993 Wisconsin Act 427, effective May 7, 1994  
Higher Education Act of 1965, §485(f) (20 U.S.C. 1092 (f))  
Clery Act, as amended, Sexual Violence Elimination Act (SaVE Act) as authorized by Violence Against Women Reauthorization Act  
Unlawful Discrimination/Harassment/Sexual Harassment/Sexual Misconduct/Sexual Violence Complaint Form (see WITC Forms Database)

Any student, employee, or student/employee applicant who believes that he/she has been unlawfully discriminated against or harassed or sexually harassed or a victim of sexual misconduct/sexual violence including domestic violence, dating violence, stalking, and/or similar unwelcome conduct determined to deny a person equal access to the College's educational programs or activities in violation of College policy is urged to report the incident.

The following position has been designated to oversee compliance with federal and state statutory and regulatory requirements related to equal educational opportunities including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, as amended, Section 504 and Section 508 of the Rehabilitation Act of 1973, Title II of The Americans with Disabilities Act of 1990, as amended, and The Americans with Disabilities Act Amendments Act of 2008, Clery Act, as amended, Sexual Violence Elimination Act (SaVE Act) as authorized by Violence Against Women Reauthorization Act, Higher Education Act of 1965, §485(f) (20 U.S.C. 1092 (f)) and the guidance supplied by Department of Education, Office of Civil Rights and to handle inquiries, investigations and resolve complaints regarding the College's equal opportunity and non-discrimination/non-harassment policies for students, employees and student/employee applicants: Director, Human Resources, Administrative Office, 505 Pine Ridge Drive, Shell Lake, WI 54871; (715) 468-2815 ext. 2240. Employees and students may also report complaints to any member of the College Leadership Team or to law enforcement as appropriate. If any member of the College Leadership Team is alleged to have engaged in unlawful discrimination/harassment/retaliation, the complaint must be filed directly with the President. If the President is alleged to have engaged in unlawful discrimination/harassment/retaliation, the complaint must be filed directly with the Board Chair. All allegations/complaints will be investigated promptly according to College procedures and both the complainant and accused will be afforded equitable rights during the investigative process.

All complaints or reports of alleged acts or charges of unlawful discrimination/harassment/sexual harassment/sexual misconduct/sexual violence including domestic violence, dating violence, and/or stalking reported to the College will be handled under developed procedures that will include, but not be limited to, taking immediate action to eliminate the unlawful action, preventing its recurrence, addressing its effects, publishing a notice of non-discrimination/non-harassment/non-retaliation, adopting and publishing grievance procedures and ensuring College employees are trained to respond to issues/complaints promptly and equitably. The procedure is available for complaints by students, employees and

student/employee applicants concerning alleged unlawful discrimination/ harassment/sexual harassment/sexual misconduct/sexual violence including domestic violence, dating violence, stalking, and/or similar unwelcome conduct determined to deny a person equal access to the College's educational programs or activities as those terms are described below.

WITC Director, Human Resources serves as the Equal Opportunity/ Affirmative Action Officer and Title IX Coordinator and the central intake point for complaints of unlawful discrimination/harassment/sexual harassment/sexual misconduct/sexual violence including domestic violence, dating violence, stalking, and/or similar unwelcome conduct determined to deny a person equal access to the College's educational programs or activities. All charges of unlawful discrimination/ harassment/sexual harassment/sexual misconduct/sexual violence including domestic violence, dating violence, stalking, and/or similar unwelcome conduct determined to deny a person equal access to the College's educational programs or activities will be investigated according to College procedure by the Director, Human Resources (or designee) or a supervised investigation will be delegated to other trained, responsible members of the College Leadership Team and/or outside legal counsel as appropriate.

### **Definitions**

1. Student means a person who has gained admission and is participating or attempting to participate in a College education program or activity.
2. Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by the College.
3. Unlawful discrimination shall mean a difference in treatment in any employment related action, service, program, course, or facility of WITC on the basis of race, color, religion, sex, national origin, age, disability or status in any group protected by federal, state or local law in employment, admissions or its programs, services or activities. Unlawful discrimination may be in the form of harassment such as:
  - a. Unsolicited and repeated derogatory epithets, derogatory statements or gestures made to a person because of his/her protected status.
  - b. Any attempt to penalize or punish a person because of his/her protected status.
4. Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:
  - A College employee conditioning the provision of an aid, benefit, or service offered by the College on an individual's participation in unwelcome sexual conduct;
  - 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 College's education programs or activities; or
  - Sexual assault, dating violence, domestic violence, or stalking.

Sexual Harassment could include, but is not limited to, unwelcome sexual advances, unwelcome/inappropriate physical contact that may be sexual or non-sexual in nature, unwelcome request for sexual favors, requests to take/taking photos/posting photos that are unwelcome/inappropriate based on the circumstances and other verbal or physical conduct of a sexual nature (including, but not limited to, deliberate or repeated unsolicited gestures or comments, or the deliberate or repeated display of offensive, sexually graphic materials, not necessary for educational purposes), when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's status as a student or employee;
- b. Submission to or rejection of such conduct by an individual is used as a basis for enrollment, rating, or grading of a student or any employment related action for an employee;

- c. Such conduct has the purpose or effect of substantially interfering with an individual's academic or work progress, or creating an intimidating, hostile, or offensive academic or working environment.
5. Sexual misconduct/sexual violence is also sexual harassment and, as such, is prohibited. Sexual misconduct/sexual violence could include sexual acts against a person's will or where a person is incapable of giving consent. The term "sexual assault" means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
6. "Domestic violence" includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person with whom the individual shares a child, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.
7. "Dating violence" means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.
8. "Stalking" means a pattern of repeated and unwanted attention, harassment, contact, or other action directed at a specific person that could cause a reasonable person to feel fear or suffer substantial emotional stress.
9. "Formal Complaint" means a written document which is either (i) filed by a complainant with the Title IX Coordinator in person, by mail, or by electronic mail; or (ii) signed by the Title IX Coordinator which alleges Sexual Harassment against a respondent and requests that the College investigate the allegations. A complaint will not be considered a Formal Complaint if the complainant is not participating in or attempting to participate in a College education program or activity at the time the complaint is filed. Unless signed by the Title IX Coordinator, a Formal Complaint may be submitted in paper or by electronic submission, but must contain indicia of the person who is filing the complaint (either a signature, digital signature, or another mark which indicates that the complainant is filing the complaint).
10. "Supportive Measures" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent, which are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter Sexual Harassment. Supportive Measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus 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 campus, and other similar measures.

## **Complaint Procedure**

### **1. NOTIFICATION OF COMPLAINT**

- a. Any applicant, student, employee, or citizen requesting services from WITC who believes he/she has experienced or observed a violation of this policy or procedure at WITC may file a report with the Director, Human Resources at the following address: WITC Administrative Office, 505 Pine Ridge Drive, Shell Lake, WI 54871; (715) 468-2815, ext. 2240. [amanda.gohde@witc.edu](mailto:amanda.gohde@witc.edu)
- b. The complaint report should be in writing, to the Director, Human Resources. The report should detail the facts and circumstances which are the basis for the complaint and identify the individual(s) at WITC responsible for the alleged violation and the policy, procedure, or practice that has been violated. Whenever possible, the "Unlawful Discrimination/Harassment/Sexual Harassment/Sexual Misconduct/Sexual Violence Complaint Form" should be used to provide the information requested. The complainant and the respondent will be advised of the College policy and procedures when filing a complaint. If the complaint is not a Formal Complaint, Supportive Measures will be

provided; however, no further investigatory action shall be taken and the grievance procedures of this policy shall not apply.

- c. The filing of a report with the College does not restrict a person's right to seek redress through avenues outside of the College.
- d. Retaliatory action against anyone filing a legitimate report for any type of unlawful discrimination/harassment, including sexual harassment/sexual misconduct/sexual violence, is strictly prohibited.

## 2. DETERMINATION OF NEED FOR IMMEDIATE ACTION

Upon the receipt and any complaint (Formal or otherwise), the Title IX Coordinator shall determine whether the facts and circumstances of the matter require emergency removal of the respondent from his/her education program or activity because the respondent poses an immediate threat to the physical health or safety of any student or other individual based upon the allegations of Sexual Harassment through an individualized safety and risk analysis. If the Title IX Coordinator determines that emergency removal of the respondent is necessary, the College shall remove the respondent and provide the respondent with notice of the removal and an opportunity to challenge the decision immediately following the removal.

Similarly, if the respondent is a non-student employee, the College may place such employee on administrative leave pending the conclusion of the grievance process.

## 3. PROVISION OF SUPPORTIVE MEASURES

Upon the receipt of any complaint (Formal or otherwise), the Title IX Coordinator will promptly contact the complainant to discuss the availability of Supportive Measures, determine what, if any, supportive measures the complainant would desire (provided, however, the College reserves the right to determine the appropriateness of such measures and may deny such request), inform the complainant of the ability of supportive measures with or without the filing of a Formal Complaint, and explain to the complainant the process for filing a Formal Complaint.

## 4. PRE-INVESTIGATION ACTIVITIES

Upon the receipt of a Formal Complaint, the Director, Human Resources will provide to the parties:

- Notice of the College's grievance process.
- Notice of the allegations of Sexual Harassment, which shall include sufficient detail known at the time, including the identity of the parties involved, if known, the conduct alleged, and the date and location of the alleged incident, if known.
- Notice that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- Notice that the parties may have the support of an advisor through the grievance process, who may be, but is not required to be, an attorney.
- Notice that the parties may inspect and review evidence considered by the investigator in the course of the investigation.
- Notice that any knowingly false statements or submission of knowingly false information during the grievance process will be subject to the College's Code of Conduct.

## 5. PRELIMINARY INVESTIGATION

In this step, the investigator must determine the facial validity of the Formal Complaint. A Formal Complaint will not be facially valid, and must be dismissed where any of the following are true:

- The conduct did not occur against a person in the United States;
- The conduct did not occur in the College's education program or activity (which would include, for example, conduct which did not occur on College property or within a club or activity having an affiliation with the College).

- Assuming the veracity of all allegations in favor of the complainant, the conduct still would not constitute Sexual Harassment.

The investigator may also dismiss the complaint, or any allegations therein, where:

- The Complainant informs the Title IX Coordinator that the complainant desires to withdraw the Formal Complaint, or any allegations therein;
- The Respondent is no longer enrolled or employed by the College; or
- Specific circumstances prevent the investigator from gathering evidence sufficient to make a determination on the Formal Complaint or the allegations.

In the event there are multiple complaints involving the same complainant against more than one respondent, or more than one complainant against more than one respondent, or by one party against the other party, but all of which arise out of the same facts and circumstances, the investigator may consolidate the complaints.

## 6. INVESTIGATION

The specific steps of the investigation will vary based on the nature of the allegations and other factors; however, the College's inquiry will be prompt, thorough, and impartial. Following receipt of the complaint, the Director, Human Resources (or designee) will:

- a. Conduct individual meetings with the complainant to discuss the substance of the complaint and to identify witnesses (lay or expert) and other inculpatory or exculpatory evidence. The investigator will provide advanced notice to the interviewee, including the date, time, location, and purpose of the investigative interview at least five (5) business days in advance to permit the party to prepare to participate.
- b. Conduct individual meetings with the respondent to discuss the substance of the complaint and to identify witnesses (lay or expert) and any other inculpatory or exculpatory evidence. The investigator will provide advanced notice to the respondent, including the date, time, location, and purpose of the investigative interview at least five (5) business days in advance to permit the party to prepare to participate.
- c. Conduct individual meetings with identified witnesses from each party. Each witness shall be provided written notice of the date, time, location, participants, and purpose of all interviews at least five (5) business days in advance. In addition, for any party who is invited or expected to participate in a witness interview, notice of the witness interview will also be provided to such party.

Prior to the conclusion of the investigation, the investigator shall send to the complainant and respondent the opportunity to review any evidence obtained through the investigation which directly relates to the allegations contained in the complaint, including any evidence upon which the investigator does not intend to rely in rendering a determination. Such information will include any inculpatory or exculpatory evidence obtained from any source. Such evidence will be sent in an electronic format to the parties and any identified party advisor (unless requested by a party to be received in hard copy format). Each party will be given at least ten (10) calendar days to submit a written response to the investigator for consideration by the investigator prior to the completion of the investigation.

The investigator shall conclude the investigation by drafting a written investigative report which fairly summarizes the relevant evidence. Such report will be sent to the parties and any identified party advisor. The parties will have 5 days to review and provide a written response to the investigator.

Limits on Investigatory Authority – the Investigator may 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 such party, unless the investigator obtains that party's voluntary, written consent to do so.

Similarly, the investigator may not restrict the ability of either party to discuss the allegations under investigation, or to gather or present relevant evidence.

7. HEARING

Within 10 days following the conclusion of the investigation, the College will schedule a live hearing to present its findings. At the hearing, each party's advisor may ask the other party and any witnesses identified by the party relevant questions and follow-up questions, including questions challenging witness credibility. For this purpose, a live hearing is one which is conducted in real-time; provided, however, that either party can request that the parties be located in separate rooms with technology that enables the decision-maker and both parties to simultaneously see and hear all witnesses (including the parties themselves). Similarly, in cases where health concerns warrant, the decision-maker may direct that the hearing be conducted through technological means.

If a party does not have an advisor, one will be provided to the party for purposes of representation at the hearing by the College, at College expense. The decision-maker shall be the arbiter of whether a question on direct or cross-examination is relevant. The hearing shall be recorded either by audiovisual recording or by transcript. A copy of the recording or transcript, as applicable, will be provided to the parties within a reasonable time following the conclusion of the hearing.

The decision-maker (who may not be the Title IX Coordinator or investigator) must issue a written determination regarding responsibility. The decision-maker's standard of evidence is preponderance of the evidence. Such determination will address the requirements of 34 CFR s. 106.45(b)(7)(ii), and shall be provided to the parties simultaneously. Either side may appeal the decision by following the procedures below. If neither party appeals, the decision will become final on the day after the day the appeal period lapses.

If the decision-maker determines that there is reason to believe, by a preponderance of evidence that a violation has occurred (and no party appeals), the College will take appropriate action. Individuals discriminating against students or employees will be subject to discipline under appropriate WITC policies. The College will also take other necessary corrective action to remedy any instances or effects where unlawful discrimination/ harassment/sexual misconduct/sexual violence is determined to have occurred. Notice of the action will be sent to the principal parties involved.

8. APPEAL PROCESS (for use when no WITC faculty or staff member is the respondent in the matter – if a faculty or staff member is the respondent, consult G-113B for Appeal Procedure).

Any party can appeal a decision-maker's determination regarding responsibility, or the College's dismissal of a Formal Complaint for identified deficiencies, on any of the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination was made which could affect the outcome of the matter; or
- Allegations of a conflict of interest or bias by the Title IX Coordinator, the investigator, or the decision-maker that affected the outcome of the matter. Such a conflict of interest or bias can be alleged to be against complainants or respondents generally or against the particular complainant or respondent in the matter.

Such appeal must be filed within five (5) business days following issuance of the decision-maker's decision. Upon receipt of the appeal, the College shall appoint a reviewer to consider the appeal and shall notify the parties of its receipt of an appeal request. Such reviewer shall not be the decision-maker for the hearing, the investigator, or the Title IX Coordinator. The reviewer shall notify the parties of the appeal procedures and set a briefing schedule for the parties to submit written statements in support of, or challenging, the outcome. Such briefing schedule shall provide an opportunity for each party to respond to the arguments of the other party. The reviewer shall issue a written decision describing the result of the appeal and rationale to both parties. The reviewer's decision shall be final and binding upon the parties and there shall be no further appeal within the College of the matter.

9. INFORMAL RESOLUTION

At any time during the course of the investigation or hearing, the College may offer the parties the opportunity to engage in an informal resolution of the complaint, such as mediation. The parties may decline to participate in such process without affecting the proceedings. If the parties choose to engage in the process, the parties will each indicate consent in writing. A party may end informal resolution discussions at any time prior to reaching an agreed resolution. This process may not be utilized where the allegations involve an employee sexually harassing a student.

10. RESTRICTION

- a. Action relating to employment and/or enrollment should not be taken for or against a person until a report of unlawful discrimination/harassment has been resolved.
- b. Nothing in these procedures will preclude an employee's or student's right to seek other avenues of redress outside of the College including a complainant's right to file a criminal complaint, as appropriate.

11. DOCUMENTATION AND CONFIDENTIALITY

A record of all complaints, investigation and hearing records, informal resolutions, and training records must be maintained and forwarded to the College's Director, Human Resources for reporting purposes in compliance with federal and state laws, but no less than seven (7) years from the conclusion of a matter (including any appeal) for matters beginning on or after August 14, 2020.

WITC will submit a report by September 1st to the Board and the Wisconsin Technical College System Board specifying the number of complaints received in the previous school year and the disposition of each such complaint as directed by the WTCS office.

Notwithstanding the foregoing, the College will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, any complainant, any accused, any respondent, and any witness, other than as necessary to carry out the purposes of this policy or as required by law.

**Reference:** This procedure requires **Board approval** per Wisconsin Technical College System Methods of Administration requirements and the regulations promulgated by the authority of Title VI of the Civil Rights Act of 1964  
Title IX of the Education Amendments of 1972, as amended  
Section 504 of the Rehabilitation Act of 1973  
Title II of The Americans with Disabilities Act of 1990, as amended  
The Americans with Disabilities Act Amendments Act of 2008  
Higher Education Act of 1965, §485(f) (20 U.S.C. 1092 (f))  
Clery Act, as amended, Sexual Violence Elimination Act (SaVE Act) as authorized by Violence Against Women Reauthorization Act

**Questions regarding this policy should be directed to Human Resources.**

Policy Adopted: February 19, 1976

Policy Revised: July 10, 1978                      April 19, 1982                      July 18, 1990  
February 4, 1991                      March 1, 1991                      February 15, 1994  
January 1, 2000                      March 4, 2001                      March 4, 2002  
April 5, 2005                      July 1, 2006                      January 9, 2007 (revisions  
provided by legal counsel)  
August 7, 2012  
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August 17, 2015  
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Policy Reviewed: November 16, 2010  
August 20, 2018  
July 8, 2019



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PRESIDENT  
WISCONSIN INDIANHEAD TECHNICAL COLLEGE