

## **Title IX Sexual Misconduct, Discrimination, and Grievance Policy**

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**Wartburg College**  
**Title IX Sexual Misconduct, Discrimination, and Grievance Policy**

**I. Statement of Policy**

Wartburg College is committed to providing a learning, working, and living environment free from all forms of sexual misconduct including, but not limited to, sex-based harassment, non-consensual sex acts, non-consensual sexual touching, and sexual exploitation. Wartburg College considers sex discrimination in all forms to be a serious offense and it will not be tolerated. The college is dedicated to preventing all forms of sex discrimination and sexual misconduct and educating all students, faculty and staff regarding such discrimination and misconduct. Any conduct in violation of this policy will be treated using procedures described in this policy. Wartburg College encourages persons who have experienced any form of sexual harassment or sexual misconduct to report the incident promptly, to seek all available assistance, and where appropriate, to report the incident to local law enforcement. It is a violation of this policy for any student, and member of the staff or faculty, or any administrator to retaliate against another person for exercising his/her rights under this policy.

Members of the Wartburg College community, as well as guests and visitors have the right to protection from sexual discrimination and misconduct. All members of the Wartburg College community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The Wartburg College Sexual Misconduct, Discrimination, and Grievance Policy has been established to reaffirm these principles and to provide guidelines in reporting and recourse for those individuals whose rights have been violated. The policy is designed to promote compliance with campus, state and federal regulations; to allow for appropriate reporting, investigation, and sanctioning of behavior that is inconsistent with Wartburg College policies; and to educate all members of the College community about the implications and consequences of this inappropriate behavior.

The policy covers conduct that occurs on the Wartburg campus and any Wartburg sponsored programs or events. The policy also covers prohibited conduct that initially occurs off-campus when students or employees experience continuing effects of the off-campus acts in the educational or work setting. The policy covers offenses perpetrated by faculty, staff, students, and third parties.

**Notice of Non-Discrimination**

Wartburg College does not discriminate on the basis of race, color, national origin, creed, sex, age, religion, sexual orientation, gender identity, disability, or pregnancy in its education programs or activities. Wartburg College complies with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments Acts of 1972, the Age Discrimination in Employment Act of 1975, and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Iowa Civil Rights Act. Wartburg College has developed policies and procedures that prohibit sex and other forms of illegal discrimination in all forms. It is required to comply

with these laws. Questions about Title IX may be directed to Wartburg College's Title IX Coordinator or the US Department of Education Office of Civil Rights. Contact information for Wartburg College's Title IX Coordinator is in section **Filing a Complaint with Wartburg College and Identification and Role of Title IX Coordinator**.

### **Statement of Jurisdiction**

Wartburg College has jurisdiction over complaints of sexual harassment, sexual violence, sexual assault, intimate partner violence, domestic violence, dating violence, and/or stalking that occurs on campus or at any College sponsored event or program, regardless of where the incident occurs. The College also has jurisdiction over alleged misconduct occurring off campus, during semester breaks, or between semesters, if the Complainant(s) and/or Respondent(s) are Wartburg College students and the off-campus conduct is likely to have a substantial impact on campus life and activities, or if the incident poses a threat of danger to any member of the College community.

### **Free Speech/Academic Freedom**

As participants in a private institution, the faculty, staff, and students of Wartburg College enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution. This policy is intended to protect members of the College community from discrimination, not to regulate protected speech. This policy shall be implemented in a manner that recognizes the importance of rights to freedom of speech and expression. The College also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this policy shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.

## **II. Filing a Complaint with Wartburg College**

Wartburg College encourages those who have experienced sex discrimination or any form of sexual misconduct to report these offenses to a responsible employee, who in turn will report the incident to the Title IX Coordinator.

### **Title IX Coordinator**

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## **Discussing a Violation with a Responsible Employee**

Wartburg College encourages victims of sexual discrimination or those who have been involved in an incident of sexual misconduct to talk to somebody about what happened so that victims can get the support they need, and so that the college can respond appropriately in a timely manner.

Victims are encouraged to speak to a “responsible employee” if they believe they’ve been subjected to a violation of this policy. A “responsible employee” is someone with authority to redress sexual violence, who has a duty to report sexual violence or incidents of sexual violence to the Title IX Coordinator, or someone you believe has this duty and authority. A list of responsible employees is included below.

Different employees on campus have different levels of obligation to maintain a victim’s confidentiality. Some are required to maintain near complete confidentiality; discussion with them is called “privileged communication.” The Policy identifies these individuals “Responsible Employees (confidential).”

Other employees are required to report all the details of an incident to the Title IX Coordinator (including the identities of both the victim and alleged perpetrator). A report to these “Responsible Employees (non-confidential)” constitutes a report to the college and obligates the college to investigate the incident and take appropriate steps to address the situation.

This policy is intended to make members of the college community, including faculty, staff, and students, aware of the various reporting and confidential disclosure options available to them so they can make informed choices about where to turn should they become a victim of sexual misconduct and/or discrimination. The college encourages victims to talk to someone identified in one or more of the following groups.

Responsible Employees (confidential)

- Care providers who work for Wartburg Noah Clinic  
The W, Wartburg College  
Suite 1392  
Waverly, IA 50677  
(319) 352-8436
- Wartburg College Campus Pastors  
Ramona Bouzard, Dean of the Chapel  
Brian Beckstrom, Campus Pastor  
(319) 352-8217
- Counselors at Wartburg College Counseling Services  
Stephanie Newsom, Director of Counseling Services  
Molly Wertz, Counselor  
(319) 352-8596

If the victim of sexual discrimination or sexual misconduct desires that details of his/her incident be kept confidential, he or she should speak with someone designated as “responsible employee” (confidential). These employees cannot disclose the details of the alleged policy violation without permission from the person lodging the report.

Responsible Employees (non-confidential)

- Title IX Coordinator-Jamie Hollaway, (319) 352-8418
- Title IX Deputy Coordinator-Monica Severson, (319) 352-8469
- Assistant Director of Human Resources and Payroll-Tracy Keller, (319) 352-8394
- Director of Campus Security-John Myers, (319) 352-8372
- Wartburg College Security Officers, (319) 352-8372

- Vice President for Student Life and Dean of Students-Daniel Kittle (319) 352-8745
- Director of Residential Life and Chief Conduct Officer- Cassie Hales, (319) 352-8553
- Director of Campus Programming-Ashley Lang, (319) 352-8486
- Residence Hall Directors and Resident Assistants in respective in hall offices
- Members of the faculty and staff excluding those already identified

A victim of sexual misconduct may also seek assistance from the following resources:

- Waverly Police Department  
111 4<sup>th</sup> St. N.E  
Waverly, IA 50677  
(319) 352-5400
- Waverly Health Center  
312 9<sup>th</sup> St. SW  
Waverly, IA 50677  
(319) 352-4120
- Riverview Center  
2055 Kimball Ave #355  
Waterloo, IA 50702  
(319) 939-9599
- Cedar Valley Friends of the Family  
PO Box 784  
Waverly, IA 50677  
(319) 352-1108
- Iowa Coalition Against Domestic Violence  
1-800-942-0333
- Iowa Coalition Against Sexual Assault  
1-800-284-7821

A complainant may request that Wartburg College treat certain reported information, such as the name of the alleged perpetrator, as “confidential.” The Policy addresses requests for confidentiality in section titled Protection of Parties: Interim Measures and Requests for Confidentiality.

### **Following an Incident of Sexual Misconduct/Assault**

The college encourages a victim of sexual assault to seek medical attention and make all efforts to preserve evidence. The victim should not bathe, urinate, douche, brush teeth, or drink liquids. Clothes should not be changed; but if they are, bring all the original clothing to the hospital in a paper bag, as plastic bags damage the evidence. When necessary, the victim should seek immediate medical attention at an area hospital and take a full change of clothing, including shoes, for use after the medical examination. The items in the room or other specific location in which the

assault took place should not be disturbed. The College understands the impact of trauma imposed on a victim during an assault, and if any of the above actions are not followed it doesn't diminish the right to report an assault, or how the College will carry out the steps of the investigation.

Wartburg College also encourages victims of sexual misconduct to seek counseling and/or identify a support person. A support person plays an important role in providing personal encouragement to a victim in a crisis situation. Information regarding counseling options, both on campus and in the community, can be obtained from the Wartburg Counseling Services located in Pathways on the third floor of the Vogel Library.

A person who reports a violation of the Policy to a responsible employee will be presented with appropriate interim measures to reduce or prevent additional contact between the complainant and alleged perpetrator such as changing academic schedules and housing arrangements. Interim measures will be established by College Authorities in a timely manner once notified of the violation in policy. For more information about interim measures, please see section titled Protection of Parties: Interim Measures and Requests for Confidentiality.

### **Identification and Role of Title IX Coordinator**

The Title IX Coordinator is responsible for monitoring compliance with this policy and all related processes. The Title IX Coordinator will not personally investigate any complaints or play any decision-making role with respect to responsibility findings or sanction decisions. The Title IX Coordinator should be considered a resource for all parties involved in the processes. The Title IX Coordinator will consider all a Complainant's request for confidentiality and a Complainant's request to refrain from investigating or disciplining the alleged perpetrator. See section **Protection of Parties: Interim Measures and Requests for Confidentiality**, for guidelines in confidentiality. Wartburg College's Title IX Coordinator is Jamie Hollaway, Director of Human Resources and Payroll, Luther Hall 203, ([jamie.hollaway@wartburg.edu](mailto:jamie.hollaway@wartburg.edu) or 319-352-8418).

### **III. Definitions and Examples of Sexual Misconduct and Discrimination**

Sex Discrimination is defined as behaviors and actions that deny or limit a person's ability to benefit from, and/or fully participate in, educational programs or activities or employment opportunities because of a person's sex. Examples of sex discrimination under Title IX include, but are not limited to, sexual harassment; sexual assault; sex/gender-stereotyping, failure to provide equal opportunity in education programs, activities, and co-curricular programs including athletics; discrimination based on pregnancy; and employment discrimination.

### **Sexual based harassment and gender based harassment**

Sexual harassment is any unwelcome conduct of a sexual nature, sexual advance, request for sexual favors, or other unwanted visual, verbal, or physical conduct of a sexual nature which is directed toward a person because of his/her gender. Sexual

harassment includes, but is not limited to, situations when any of the following obtain:

- Submission to or rejection of such conduct is an explicit or implicit term or condition of an individual's employment, educational benefits, academic grades or opportunities, on-campus living environment, or participation in social, co- or extra-curricular activities;
- Submission to or rejection of such conduct is used as a basis for employment, education, or living environment decisions affecting the individual, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or participation in educational experiences, by creating an intimidating, hostile, humiliating, demeaning, or sexually offensive working, educational, or social environment. The purpose or effect will be evaluated based on the perspective of a reasonable person in the position of a complainant.

Gender based harassment is unwelcome conduct of a non-sexual nature based on an individual's actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes.

While sexual harassment and gender based harassment encompass a wide range of conduct, behaviors that may be considered sexual harassment and gender based harassment include but are not limited to the following:

- Pressuring someone to engage in sexual behavior for educational or employment benefit.
- Making a real or perceived threat that rejecting sexual behavior will carry a negative consequence for or retaliation against another person.
- Denying, directly or indirectly, a person an educational or employment related opportunity if that person refuses to comply with a sexually oriented request.
- Engaging in unwelcome physical contact such as touching, blocking normal movement, physical restraint, or assault.
- Retaliating against a person for filing a harassment complaint or threatening to report harassment.

Sexual harassment can involve males or females being harassed by members of either sex. Although sexual harassment frequently involves a person in a position of greater authority than the person being harassed, individuals in positions of lesser or equal authority can also be found responsible for engaging in prohibited harassment.

Sexual harassment can be physical and/or psychological in nature. An aggregation of a series of incidents establishing a pattern can constitute sexual harassment even



if one of the incidents considered separately would not rise to the level of harassment.

### **Hostile Environment Harassment**

Sexual harassment related to a hostile environment exists when unwanted conduct is so severe or persistent and patently offensive that it alters the conditions of education or employment, from both a subjective (the complainant) and an objective (reasonable person's) viewpoint. The determination of whether an environment is "hostile" will be based on the following factors:

- the frequency of the conduct;
- the nature and severity of the conduct;
- the identity and relationships of the persons involved;
- the location of the conduct and the context in which it occurred;
- whether the conduct was physically threatening;
- whether the conduct was humiliating;
- the effect of the conduct on the alleged victim's mental or emotional state;
- whether the conduct was directed at more than one person;
- whether the conduct arose in the context of other discriminatory conduct;
- whether the conduct unreasonably interfered with the complainant's educational or work performance;

Conduct may be physical, verbal, or nonverbal. For example, the following type of behaviors may constitute harassment:

- Inappropriate touching, hugging, or kissing.
- Sexual remarks about a person's clothing, body, or sexual relations.
- Repeated requests for a date or repeated romantic advances toward a student or employee, despite the person's rejection of the advances.
- Conversations, jokes or stories of a sexual nature.
- Sexually explicit profanity.
- Obscene gestures.
- The display of sexually explicit materials in the workplace or in campus housing.
- The use of sexually explicit materials in the classroom presented without defensible educational purposes.

### **Sexual Misconduct**

Sexual misconduct is a broad term encompassing all sexual behaviors that violate Wartburg College's Title IX Policy. Sexual misconduct includes dating violence, domestic violence, sexual assault, stalking, inducing incapacitation for sexual purposes, sexual exploitation, and relationship violence. Any harassing behavior or nonconsensual physical contact of a sexual nature may constitute sexual misconduct. Sexual misconduct may vary in its severity, and consists of a range of behaviors or attempted behaviors that may be grounds for disciplinary action under

college policy.

### **Sexual Assault**

Sexual Assault means having or attempting to have sexual intercourse or sexual contact with another individual without consent. This includes sexual intercourse or sexual contact achieved by the use or threat of force or coercion, where an individual does not consent to the sexual act, or where an individual is incapacitated. Examples of sexual assault include, but are not limited to, the following behaviors when consent is not present:

- i. Nonconsensual sexual contact is any sexual touching, however slight, with any object or body part, as defined below:
  - Intentional contact with the breasts, groin, or genitals or touching another person with any of these body parts or making another person touch the offending party 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.
  - by a man or a woman upon a man or a woman,
  - without consent.
- ii. Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part as defined below:
  - Vaginal or anal penetration by a penis, object, tongue, or finger or oral copulation (mouth-to-genital contact or genital-to-mouth contact).
  - by a man or woman upon a man or a woman,
  - without consent.
- iii. Forced sexual intercourse is any unwilling or nonconsensual sexual penetration (anal, vaginal, or oral) with any object or body part that is committed either by force, threat, intimidation, or through exploitation of another's mental or physical condition of which the assailant was aware or should have been aware.

### **Non-Disclosure of STI Information**

Anyone who knows he or she has a sexually transmitted disease must disclose that information to a potential sexual partner prior to any sexual activity.

### **Sexual Exploitation**

Sexual Exploitation involves taking nonconsensual 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 the other sexual misconduct offenses. Examples include, but are not limited to:

- Voyeurism – Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the

- knowledge and consent of all parties involved.
- Nonconsensual visual (i.e. video, photograph) or audio recording of sexual activity.
  - Nonconsensual distribution or streaming of photos, images, or information of an individual's sexual activity, intimate body parts, or nakedness having the effect of embarrassing an individual who is the subject of such images or information.
  - Prostituting another person.
  - Exposing one's genitals or inducing another to expose his or her genitals in nonconsensual circumstances.
  - Inducing incapacitation for the purpose of making another person vulnerable to nonconsensual sexual activity.
  - Knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge.
  - Possessing, distributing, viewing, or forcing others to view illegal pornography.

#### **IV. Relationship Misconduct and Violence**

Relationship misconduct includes dating violence and domestic violence as defined below. It includes abuse or violence against a person who is or has been involved in a sexual, dating, domestic, or other intimate relationship by the other person in the relationship. It may involve one act or an ongoing pattern of behavior.

##### **Dating Violence**

Dating Violence is defined as the use of physical force against an employee, student, or campus visitor, with the intent to cause bodily harm or the intentional damage of property by a person who has been in a romantic or intimate relationship with another. The existence of such a relationship will be determined by the following factors:

- Length of relationship
- Type of relationship
- Frequency of interaction between the persons involved in the relationship

##### **Domestic Violence**

Domestic Violence is a felony defined in Iowa Code 708.2A as an intentional or unauthorized act that is intended to cause pain to another or result in physical contact that is insulting or offensive, coupled with the apparent ability to do the act or to place another in fear of any such act, or the intentional and authorized pointing of a firearm or display of dangerous weapon in a threatening manner. The category of Domestic Violence pertains when the assault is committed:

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;

- By a person who is cohabiting with, or has cohabited with, the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Iowa; or
- By any person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Relationship violence can include, but is not limited to any of the following:

- Physical violence that causes bodily injury.
- Sexual violence including rape.
- Emotional abuse creating apprehension of bodily injury or property damage. This includes violence or threat of violence to one's self, one's sexual or romantic partner, and/or to the family members or friends of the sexual or romantic partner.
- Repeated telephonic, electronic, or other forms of communication— anonymously or directly—made with the intent to intimidate, terrify, harass, or threaten.
- Economic abuse involving exploitation of the victim's economic resources in an educational setting.

Relationship violence often escalates from threats and verbal abuse to violence. While physical injury may be the most obvious danger, the emotional and psychological consequences of relationship abuse are also severe and usually cause a fear of the partner and feelings of helplessness and desperation.

### **Stalking**

Stalking includes repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other medium, device, or method that purposely or knowingly causes substantial emotional distress or reasonable fear for one's safety, of bodily injury, or of death to one's own person or another person. Examples of stalking can include, but are not limited to any of the following:

- Nonconsensual communication including in-person communication, phone calls, voice messages, text messages, email messages, social networking site postings, instant messages, postings of pictures or information on websites, written letters, gifts, ordering goods or services, or any other communications that are undesired and/or place another person in fear.
- Following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a complainant.
- Vandalism, including attacks on data and equipment.
- Physical and/or verbal threats against a complainant or a complainant's loved ones.
- Gathering of information about a complainant from family, friends, co-

- workers, and/or classmates.
- Manipulative and controlling behaviors such as threats to harm oneself, or threats to harm someone close to the complainant.
  - Defamation or slander against the complainant, posting false information about the complainant and/or posing as the complainant to post to websites, newsgroups, blogs, or other sites that allow public contributions, and thereby encouraging others to harass the complainant.
  - Arranging to meet the complainant under false pretenses.

### **Effective Consent**

Effective consent is active, not passive, and can be given only by persons of legal age. Lack of consent is the critical factor in any incident of sexual misconduct. Silence, in and of itself, will not be accepted as evidence of consent. Effective consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding the conditions of sexual activity — with whom, when, where, why, and how sexual activity will take place. Obtaining consent is an ongoing process in any sexual interaction. Sexual consent must be asked for and granted each and every time sexual activity takes place, regardless of previous levels of sexual intimacy between partners. Effective consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or continued pressure to submit after someone makes it clear that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction. The parameters of effective consent are exemplified in the following guidelines:

- Consent to participate in sexual activity is freely and actively given, and requires clear communication between all persons involved in the sexual encounter.
- Either party may withdraw consent at any time. Withdrawal of consent must be outwardly demonstrated by mutually understandable words or clear, unambiguous actions that indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease. The other individual(s) must immediately stop.
- Consent to engage in sexual activity must exist from the beginning to end of each instance of sexual activity and for each form of sexual contact. Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Previous relationships or previous consent does not imply consent to future sexual acts.
- Any time sexual activity takes place, the individuals involved must be capable of controlling their physical actions and making rational, reasonable decisions about their sexual behavior. If at any time it is reasonably apparent that either party is hesitant, confused, or unsure, both parties should stop and obtain mutual verbal consent before continuing such activity.

- Consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion. Coercion is unreasonable pressure for sexual activity.
- Sexual intercourse or sexual contact with someone you know is mentally or physically incapacitated, or you have reason to believe is mentally or physically incapacitated (by alcohol or other drug use, unconsciousness, or blackout), violates this policy.
- Minors, mentally disabled individuals, or persons incapacitated as a result of consumption of drugs or alcohol cannot give effective consent. This policy also covers someone whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of a so-called “date-rape” drug.

### **Incapacitation**

An individual who is incapacitated cannot consent to sexual activity. Incapacitation is defined as the inability, temporarily or permanently, to give consent, because an individual is mentally and/or physically helpless, unconscious, or unaware that the sexual activity is occurring. Where alcohol and/or other drugs (including prescription drugs) are involved, incapacitation is a state in which a person cannot make a rational, reasonable decision because he or she lacks the ability to understand the “who, what, when, where, why, or how” of his or her sexual interaction. Warning signs that a person may be incapacitated may include: slurred speech, vomiting, unsteady gait, odor of alcohol or other substance, combativeness, and/or emotional volatility.

An individual who engages in sexual activity with someone the individual knows or reasonably should know is incapable of making a rational, reasonable decision about whether to engage in sexual activity is in violation of this policy. This includes a person whose incapacity results from ingestion of a “date-rape” or “predatory” drug. Possession, use and/or distribution of any of these substances, including but not limited to: Rohypnol, LEAN, Ketamine, GHB, or Burundanga is prohibited, and administering one of these drugs to another person for the purpose of inducing incapacity is a violation of this policy and civil criminal statutes. More information on these drugs can be found at <http://www.911rape.org/>.

### **V. Conflict of Interest**

Wartburg College has an obligation to demonstrate and document good governance to protect the integrity and credibility of the College and to maintain the trust and confidence of its community. The purpose of the conflict of interest policy is to address potential conflicts occurring when an employee is in a position to influence a college decision that may result in direct or indirect personal gain and to ensure the transparency of related party relationships. The policy is also intended to address conflicts that arise when a College employee’s personal interests or relationships conflict with the ability of such employee to act in a neutral manner with regard to a complaint against a faculty member, staff member, or student. The manner in which a conflict of interest is to be handled may also be addressed in

other College policies. In accordance with this policy, those who participate in the investigation or resolution of a complaint under Wartburg's policies shall take all necessary precautions to avoid any actual or potential conflicts of interest and to disclose any actual or potential conflicts that may exist.

A conflict of interest arises when someone may benefit personally from dealings with an entity or person with a relationship to the college, including indirect benefits such as to family members or businesses with which the person is closely associated. A conflict of interest also arises when someone's personal interests or relationships may compromise the professional judgment in the discharge of college duties and responsibilities. Examples of potential conflicts include but are not limited to:

- employment with, membership on a board of directors of, or significant ownership interest in a company doing business with the College;
- an employee or staff member serving in some capacity in an investigation or proceeding under the College's policies has a personal interest with one of the investigation or proceeding.

All individuals with an actual or potential conflict of interest shall complete a conflict of interest disclosure statement at the earliest practicable time so that the conflict may be reviewed and resolved. All statements should be forwarded to the Title IX Coordinator. Disclosure statements may be reviewed by a committee consisting of representatives from Human Resources, Student Life, and Dean of Faculty offices, respectively. The committee will determine any appropriate action that may be necessary including but not limited to annual disclosure or disqualification from participation in transactions creating the conflict. Not all conflicts will be material enough to be of practicable importance or if material, upon full disclosure may not necessarily affect the College, the proceeding, or the investigation in an adverse way. However, in the interest of transparency, disclosure is still required.

If an individual believes that a College employee has a conflict, the individual is to promptly report the perceived conflict to the Title IX Coordinator. In the event that the conflict concerns the Title IX Coordinator, the individual is to submit the notification to the Dean of Students or Dean of the Faculty. The notification is to be in writing and include a description of the perceived conflict of interest and the rationale for the belief that there is a conflict of interest. The Dean of Students or Dean of the Faculty shall be responsible for reviewing the matter and taking appropriate actions to ensure that the conflict of interest concern is appropriately addressed.

## **VI. Reporting a Violation**

Any person at Wartburg College who believes he/she has been subject to sexual discrimination or a victim of a sexual misconduct act by a Wartburg College student,

faculty, staff, or outside third party is encouraged to promptly take the following actions.

- Report the incident to a responsible employee. (See Discussing a Violation with a Responsible Employee Section)
- Individuals can report information relating to violations of the conduct code including violations of this policy to [GETHELPNOW](#), which allows members of the Wartburg Community to anonymously report crimes, offer tips, or advise the College of other adverse situations.
- The information shall be brought to the Title IX Coordinator or one of the Title IX investigators.
- The Title IX Coordinator or designee will meet with the complainant to explain his/her rights and options and the procedure by which the investigation will be conducted. The Title IX Coordinator will consider a victim's request for confidentiality, described further in section Protection of Parties: Interim Measures, Requests for Confidentiality, and Prohibition on Retaliation.
- The Title IX Coordinator or designee will provide information about the formal reporting options and policies governing confidentiality, describe the rights of the victim regarding options and policies governing confidentiality, describe the rights of the victim regarding type of protection (no contact order, restraining orders), and explain how each reporting option works.
  - i. Institutional complaint – An institutional or criminal complaint initiates the investigation procedures by the Title IX Coordinator and the Title IX Investigator. The written institutional complaint should provide the following information:
    - a. the names, addresses and telephone numbers, if available, of the complainant and respondent;
    - b. specific acts alleged, including dates, times, and locations;
    - c. names of potential witnesses, including addresses and telephone numbers, if available; and
    - d. actions taken by any party to address the discrimination, if any.
  - ii. Criminal complaint – Each complainant has the right to notify or to decline to notify campus security, the police, or other local law enforcement agency. If the Complainant wishes, a responsible employee of Wartburg College will assist the Complainant with reporting the incident to law enforcement.

### **Investigation Procedures**

Wartburg College shall attempt to resolve any reports of sexual harassment and discrimination by informing, educating, mediating, or negotiating informal agreements with the complainant and respondents. If no resolution can be reached that is acceptable to both parties and to the College, the Title IX Coordinator or



designee may institute a sexual harassment investigation, at the request of the complainant, as outlined below.

The goal of early resolution is to resolve concerns at the earliest stage possible, with the cooperation of all parties involved. Early resolution may include an inquiry into the facts, but typically does not include a formal investigation. Means for resolution shall be flexible and encompass a full range of possible appropriate outcomes. Early resolution includes options such as mediating an agreement between the parties, separating the parties, referring the parties to counseling programs, negotiating an agreement for disciplinary action, conducting targeted educational and training programs, or remedies for the individual harmed by the harassment or discrimination. Early resolution can also include options such as discussions with the parties, making recommendations for resolution, and conducting follow-up after a period of time to assure that the resolution has been implemented effectively. Early resolution may be appropriate for responding to anonymous reports and/or third party reports. Steps taken to encourage resolution and agreements reached through early resolution efforts should be documented.

The following procedures will govern all investigations of sexual misconduct complaints alleging violations of this policy. Wartburg College reserves the right to deviate from these procedures when such deviation is necessary to ensure appropriate processing of the investigation, to ensure the process will be prompt, fair and impartial. Title IX Investigators without a conflict of interest to the parties, witnesses, or the outcomes of the decision will conduct the investigation and adjudication. Title IX investigations will be conducted by officials who have received at minimum, annual training on issues related to dating violence, domestic violence, sexual assault, stalking, and how to conduct investigations or hearings that protect victims and promote accountability. Should the Title IX Coordinator be unavailable to oversee the process and coordinate the process, his/her designee will act instead.

1. A Title IX investigative team (consisting of two trained Title IX Investigators) shall conduct an investigation into the report. The investigation should be conducted within 14 working days or within a reasonable amount of time required to complete the investigation. If law enforcement is involved, the college may delay its investigation process while police engage in a legal investigation.
2. The purpose of the college investigation is to establish whether there is a reasonable basis for believing that the alleged violation of this policy has occurred. During the course of an investigation, the investigating office will work collaboratively with other college offices to ensure that the investigation is handled properly and thoroughly.
3. If the complainant or the respondent is under 16 years of age, his/her parent or legal guardian will be notified of the complaint by phone, email or U.S. mail and the local police department will be notified.
4. Advisors can be requested throughout this process by both the complainant and the respondent. An advisor is any individual of the

party's choosing. An advisor does not actively participate unless the advisor obtains express permission to do so from the individual charged with handling the investigation. Advisors may be present during the investigation, and during any pre-investigation and post-investigation meetings.

5. The investigation will include, but not be limited to, interviewing the Complainant, Respondent, any relevant witnesses, and evaluating other evidence such as documents, emails, texts, etc. Complainants and respondents will each have the opportunity to respond to allegations, examine evidence, and participate in the process. All witness interviews will be audio recorded, and all such recordings shall at all times remain the property of the College.
6. In conducting the investigation, the appropriate administrator or their designee may interview the complainant, the respondent, and other persons believed to have pertinent information. At all times the Title IX Coordinator, who is responsible for the investigation, will take appropriate steps to ensure the confidentiality of the investigation and protection of all parties.
7. In all procedures involving allegations of violations of this policy, regardless of any language found within any applicable policy, the standard of proof shall be "preponderance of the evidence." A preponderance of the evidence means that the information shows that it is "more likely than not" that the accused violated this policy.
8. After all available information is reviewed and interviews completed, the Title IX Investigators, or his/her designee will review all the information and
  - a. Provide the Complainant and Respondent the same opportunities to respond to allegations, examine evidence, and participate in the process.
  - b. Determine whether misconduct has occurred and the appropriate response. When an employee has engaged in misconduct, the Director of Human Resources and/or Dean of the Faculty will take formal action. When a student has engaged in misconduct, the Chief Student Conduct Officer will take formal action. Sanctions may include disciplinary action ranging from apologies, warnings, up to suspension or termination of employees and suspension or expulsion of students.
  - c. Notify simultaneously in writing the complainant and the respondent regarding the outcome of the investigation, the appeal procedures, and any changes to the final results within (10) ten working days after the completion of the investigation.
  - d. Partner with necessary administration and/or departments to provide assurance that the school will take steps to prevent the recurrence of any sexual violence and remedy discriminatory effects on the complainant and others, as appropriate.

9. If either party is unsatisfied with the handling of the investigation or the recommendations of the Title IX investigation or the recommendations of the Title IX Investigator, she or he may request from the Title IX Investigator a review of materials used in the investigation and clarification of sanctions. The request must be made in writing within three (3) working days and must explain the reasons, in light of the established criteria for an appeal of sanctions, why the student objects to the sanctions or seeks further clarification.
10. Protection of the campus community is paramount. Therefore, the college may take appropriate disciplinary action where a complaint of sexual assault, dating violence, domestic violence, and stalking complaint has occurred, with or without concurrence of the complainant.
11. During any on-campus disciplinary action relating to a sexual assault, the complainant and respondent are each entitled to have an advisor of choice present in the room.
12. All complaints will be adjudicated as expeditiously as possible and generally within sixty (60) work days.

### **Appeal Process**

If, after the initial review and clarification of sanctions by the Title IX Investigator, the complainant or respondent chooses to appeal the decision, he or she may, within three (3) workdays, formally appeal to the Title IX Coordinator, by written notice. If there is a conflict of interest with the Title IX Coordinator, the appeal shall be referred to the Dean of Students, Dean of the Faculty, or the President. This notice must include a rationale for the person's appeal, explaining why he/she objects to the decision. The Title IX Coordinator, Dean of Students, Dean of the Faculty, or President will consider an appeal only if one of the following is demonstrated:

- Irregularities that influenced the outcome of the disciplinary action. It is up to the person making the appeal to demonstrate that the original decision would likely have been different if the irregularity or error not occurred.
- Prejudice on the part of the Title IX Investigator or any other college personnel who participated in the process against any party involved. The prejudice must be more than simple opposition to the appealing party's point of view; instead, evidence must show a significant conflict of interest, bias, pressure, or influence that prevented a fair and objective hearing.
- Discovery of new and significant evidence not available at the time of the original hearing/ investigation.
- To determine that the finding is not consistent with the information or evidence obtained or a sanction or remedy that is extraordinarily disproportionate to the violation.

Upon receipt of this written notice, the Dean of Students, Dean of Faculty, or President will inform the other party of the appeal, evaluate the merits of the appeal request, and will inform the appellant within three (3) workdays as to whether or not the full appeal will be considered. If the Dean of Students, Dean of Faculty, or President denies the appeal request, there is no further appeal.

If the appeal is accepted, an Appeal Committee will be established comprised of trained Title IX investigators not involved in the original investigation. The Appeal Committee will review the notice of complaint document, any investigatory materials, Investigators Notice of Decision, Notice of Appeal, and any response to the Notice of Appeal. With fifteen (15) workdays, the Appeals Committee will make a decision on the appeal. If the Appeal Committee reverses or alters the original Investigators' decision, the Appeal Committee's decision shall be final.

#### **VII. Protection of Parties: Interim Measures, Requests for Confidentiality**

After lodging a complaint, a student or employee may request that the complainant's name not be disclosed to the alleged perpetrator and may also request that the College refrain from investigating or taking disciplinary action against the alleged perpetrator. To every extent possible, Wartburg College will endeavor to honor such a request. The College reserves the right, however, to override this request in order to meet its legal obligations under Title IX and other laws as necessary. Honoring a confidentiality request or a request to refrain from investigating or disciplining an alleged perpetrator may limit Wartburg College's ability to effectively investigate, discipline, or respond to a complaint or incident. Members of the Wartburg College community are prohibited from retaliating against any individual who lodges a complaint or who participates in an investigation under this Policy.

The Title IX Coordinator will consider all requests for confidentiality, as well as requests to refrain from investigation or discipline. If the Title IX Coordinator decides that Wartburg College can honor the Complainant's request without compromising its duties under Title IX and other laws, he or she will take all reasonable steps to respond to the incident while honoring this request. If the Title IX Coordinator decides that Wartburg College cannot honor the complainant's request without breaching its duties under Title IX and other laws, the Title IX Coordinator will overrule the Complainant's request. If a request is overruled by the Title IX Coordinator, he or she will advise the Complainant of the decision and take any steps necessary to protect the Complainant.

After it receives a complaint, Wartburg College will promptly consider and if necessary, take interim measures prior to its investigation, to ensure the Complainant's safety, including safe housing and movement on campus, as well as the Complainant's ability to participate in educational activities opportunities.

To the extent possible, the proceedings will be conducted in a way that protects the confidentiality and safety of the complainant, respondent, and witnesses. The parties will be informed promptly about the outcome of the proceedings.

- a. At the time the investigation commences, the respondent will be informed of the nature of the allegations and the facts surrounding the allegations.
- b. At any time, the Title IX Coordinator or designee may recommend interim protections or remedies for the parties or witnesses involved be provided by appropriate college officials. At minimum, interim measures include but are not limited to: periodically updating the Complainant on the status of the investigation, placing limitations on contact between the parties, notifying the alleged perpetrator of guidelines established to prevent contact with the complainant, making the Complainant aware of Title IX rights, available resources, notifying the Complainant of the right to engage law enforcement, changing the living arrangements including making alternative workplace or student housing arrangements, which could include removing an alleged perpetrator from campus housing at her or his own expense, modifying course schedules including assignments and exams and increased monitoring or supervision.
- c. A complainant found to have been intentionally dishonest in making the allegations or to have made them maliciously will be subject to disciplinary action. False charges or complaints of sexual harassment are damaging to the campus community and will be treated as a serious offense. Intentional false reports may also violate state criminal statutes and/or civil defamation laws.

### **Intent**

The fact that a person did not intend to sexually harass or assault an individual is not considered a defense. The use of alcohol or drugs does not excuse behavior that violates this policy.

### **VIII. Outcomes of Sexual Discrimination or Misconduct**

Disciplinary action by the college will normally proceed even if criminal proceedings have been initiated. Wartburg College's action will not be subject to challenge on the grounds that criminal charges involving the same incident have been dismissed or reduced, or that no criminal charges have been brought. The procedures and burdens of proof in a disciplinary action are different from those applicable to a criminal trial. If civil authorities are notified, students can anticipate that Wartburg College will be in communication with such authorities. Any person violating the college's policy against sexual discrimination, sexual assault, sexual misconduct, relationship violence (domestic and dating), or stalking may be subject to disciplinary action, including loss of educational opportunities, loss of scholarship, suspension, dismissal, or expulsion. The nature of the sanction(s) will be determined by case basis, taking into account numerous factors, including the following:

- The severity of the incident;

- Previous disciplinary infractions;
- Consistency in punishment for like offenses;
- Risk of repeat offenses;
- Danger to community;
- Acceptance of responsibility/remorse;
- Type of harm caused;
- Number of victims;
- Necessary actions to protect survivor/community.

In addition to sanction (s) against the alleged perpetrator, the College may provide recommendations/accommodations to the complainant such as counseling, alternative living/working arrangements, and academic accommodations.

### **Retaliation**

Wartburg College prohibits retaliation against a complainant, respondent, or any individual or group of individuals involved in the investigation of and/or resolution of an allegation of sexual discrimination or misconduct. Such retaliation shall be considered a serious violation of the policy and independent of whether an informal or formal complaint of sexual discrimination or misconduct is substantiated.

Encouraging others to retaliate shall constitute a violation of the policy. Examples of conduct that may constitute retaliation include, but are not limited to:

- unfair grading, evaluation, or assignments;
- having information withheld or made difficult to obtain in a timely manner, such as class information, recommendations, or grades; not being informed of important events, such as meetings or changes in policies; and
- ridicule (public or private), taunting, bullying, verbal or written threats or bribes, or refusal to meet with the person even though that person has a right to do so.

Any person who retaliates against a complainant will be subject to disciplinary action up to and including termination of employment (employees) or expulsion (students).

Persons who believe they have been retaliated against in violation of the policy should file a complaint with the Title IX Coordinator.

### **Confidentiality**

All inquiries, complaints, and investigations are treated with discretion. Information is disclosed as law and policy permit or require. The identity of the complainant may, however, be disclosed to the person(s) accused of misconduct. Publicizing information about alleged sex discrimination or misconduct is strongly discouraged, as publication of information may constitute retaliation under this Policy, which is strictly prohibited.

The Title IX Coordinator shall maintain all information pertaining to a complaint or investigation in secure files.

#### Federal Statistics Reporting Obligations:

The federal government requires campus law enforcement officials to publish an [annual Campus Security Report](#) describing the types and numbers of sexual misconduct incidents that have occurred and their general location (on or off campus or in the surrounding area; no addresses are given). These reports contain statistical information only. All personally identifiable information is kept confidential. This report helps to ensure greater community safety by providing the community with a clear picture of the nature and extent of campus crime and meets reporting requirements established by the Clery Act.

### **IX. Special Provisions**

#### Attempted Violations

In most circumstances, the college will treat attempts to commit any of the violations listed in this policy as if those attempts had been completed.

#### Encouraging Complaining Parties to Report Violations

The college community encourages the reporting of Title IX violations. Sometimes complaining parties are hesitant to report to college officials because they fear that they may be charged with policy violations, such as underage drinking at the time of the incident. It is in the best interest of this community that as many complaining parties as possible report to college officials. To encourage reporting, the college pursues a policy of offering immunity from being charged with policy violations related to a particular incident to those parties complaining of sex discrimination or misconduct.

#### Encouraging Witnesses to Aid Victims

Wartburg College subscribes to the concept of a “Good Samaritan” policy. For example, an underage student who has been drinking should not hesitate to help another student who is in danger. A student who chooses to intervene in the situation will not be subject to formal discipline sanctions.

#### Parental Notification

The college reserves the right to notify parents/guardians of dependent students regarding any health or safety emergency, change in student status, or conduct situation. The college also reserves the right to designate which college officials have a need to know about individual complaints pursuant to the Family Educational Rights and Privacy Act (FERPA).

#### Notification of Outcomes

- a. The outcome of the Title IX investigation involving students is part of the educational record of the student parties involved, and is protected from release under the federal laws delineated by FERPA. The college

observes, however, legal exceptions regarding notification of the parties involved and others whom the college determines to inform based on the law and this policy.

- b. Students who bring any sort of sex discrimination complaint against faculty or staff shall be informed of the outcome of the investigation and the resolution at the same time as the complaint respondent.
- c. The college may release publicly the name, nature of the violation and the sanction for any student who is found in violation of a college policy that is a “crime of violence”, including: sex offenses, arson, burglary, robbery, criminal homicide assault, destruction/damage/vandalism of property, and kidnapping/abduction. The college will release this information to the complainant in the case of any of these offenses regardless of the outcome of the investigation.

### **Implementation and Dissemination of Information**

To support this policy, Wartburg College will conduct periodic orientation and ongoing educational programs for faculty, students, and staff concerning all areas of the Title IX, Clery Act, VAWA, and Campus SaVE Act. The Title IX Coordinator is charged with communicating annually by letter to all faculty, staff, and students to remind them of the contents of the Title IX Policy, rights and privileges of individuals, and responsibility of faculty and staff regarding sexual misconduct, relationship violence, and stalking. Copies of this policy and the procedures it prescribes will be available at all times at appropriate college centers and offices, as well as on the Wartburg College website.