

Title IX Sexual Harassment Policy and Procedures

I. OVERVIEW OF POLICY

Title IX

Title IX is a federal law that states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Title IX prohibits sex discrimination, including sexual harassment. This policy sets forth the school’s process for addressing claims of sexual harassment under Title IX.

The contact information for the school’s Title IX Coordinator is:

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Jurisdiction

The complaint procedures described in this policy shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a student or employee, while in an education program or activity in which a school exercises substantial control over the context and respondent, was subjected to one or more of the following forms of sexual harassment:

1. A school employee conditioning the provision of a school aid, benefit, or service on the student's or employee’s participation in unwelcome sexual conduct
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to the school's

education program or activity or an employee equal access to employment

3. Sexual assault, dating violence, domestic violence, or stalking.

All other sexual harassment complaints or allegations brought by or on behalf of students and employees shall be investigated and resolved in accordance with St. Johnsbury Academy Student Handbook and/or St. Johnsbury Academy Employee Handbook. The determination of whether the allegations meet the definition of sexual harassment under Title IX shall be made by the school's Title IX Coordinator.

Duty of All Employees to Report

All employees of the school have a duty to report allegations of sexual harassment to the Title IX Coordinator that they witness and/or that are reported to them.

Applicability of this Policy

In accordance with federal law, this policy applies to matters filed that address behavior that took place on or after August 14, 2020.

II. SCHOOL'S RESPONSE TO REPORT OF TITLE IX SEXUAL HARASSMENT

Response to Report of Allegations of Sexual Harassment

A Complainant is defined as an employee or student who is the alleged victim of sexual harassment and who may file a complaint alleging sexual harassment in violation of the Title IX policy. The parent/guardian of a minor student may also file a complaint of sexual harassment. The party who is alleged to have engaged in the sexual harassment is referred to as the Respondent.

The report of alleged harassment should be filed with and/or directed to the school's Title IX Coordinator for management. Any employee who receives a report of sexual harassment shall forward the report to the Title IX Coordinator and/or Deputy Coordinators within one day of receipt.

Filing a Formal Complaint of Sexual Harassment

Upon receiving such a report, the Title IX Coordinator shall inform the complainant of the right to file a formal complaint and the process for filing a formal complaint. A complaint may be filed by phone, by mail, by email, and/or in person. The formal complaint form can be found here [SJA Title IX Complaint Form](#).

Discretion of Title IX Coordinator

If the complainant chooses not to file a formal complaint, the Title IX Coordinator shall file a formal complaint in situations when a safety threat exists or in situations when it is necessary for the school to do so to avoid the appearance of being deliberately indifferent to known allegations of sexual harassment and to meet the school's Title IX obligation to provide all students with an educational environment that does not discriminate based on sex.

In such cases, the Title IX Coordinator shall provide the alleged victim notices as required by the Title IX regulations at specific points in the complaint process.

Title IX Administrators involved in Investigation of a Formal Complaint

The Title IX Coordinator, investigator, decision-maker, and/or a facilitator of an informal resolution process shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Such persons shall receive training in accordance with the federal Title IX regulations.

The Title IX Coordinator may act as investigator. The Title IX Coordinator or designee shall designate a decision-maker for the determination of policy violation and, if appropriate, discipline and a separate individual to act as appeals officer. In no instance, shall the Title IX Coordinator act as decision-maker and/or appeals officer.

Supportive Measures

Upon receipt of a report of Title IX sexual harassment, the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures and shall consider the complainant's wishes with respect to the supportive measures implemented. Supportive measures shall be offered as appropriate to both parties, as reasonably available, and without charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

In regard to students, supportive measures are nondisciplinary, nonpunitive, and designed to restore or preserve equal access to the school's education program or activity without unreasonably burdening either party – complainant and respondent, including measures designed to protect the safety of all parties or the school's educational environment or to deter sexual harassment. Supportive measures may include, but are not limited to, counseling, course-related adjustments, modifications of class schedules, mutual restrictions on contact, increased security, and monitoring of certain areas of the campus.

In regard to employees, supportive measures may include administrative leave at the discretion of the Headmaster and/or designee.

The school shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the school's ability to provide the supportive measures.

Emergency Removal from School

A student shall not be disciplined for alleged sexual harassment under Title IX until the investigation has been completed. However, on an emergency basis, the school may remove a student from the school's education program or activity, provided the following occurs before the removal:

- the school conducts an individualized safety and risk analysis,

- the school determines that removal is justified due to an immediate threat to the physical health or safety of any student or other individual arising from the allegations, and
- the school provides the student with notice and an opportunity to challenge the decision immediately following the removal.

The authority to remove a student does not modify a student's rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.

If a school employee is the respondent, the employee may be placed on administrative leave with or without pay at the discretion of the Headmaster during the pendency of the formal complaint process. (34 CFR 106.44)

Mandatory and Permissive Dismissal of Formal Complaint

The Title IX Coordinator must dismiss a formal complaint under the following circumstances:

- if the alleged conduct would not constitute sexual harassment as defined in this policy and under Title IX, even if proved;
- the conduct did not occur in the school's education program or activity; or
- the conduct did not occur against a person in the United States.

The Title IX Coordinator may dismiss a formal complaint under the following circumstances:

- if the complainant notifies the school in writing that the complainant would like to withdraw the complaint or any allegations in the complaint;
- the respondent is no longer enrolled or employed by the school; or
- circumstances prevent the school from gathering evidence sufficient to reach a determination about the complaint.

Upon dismissal, the Title IX Coordinator shall promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties and shall inform them of their right to appeal the dismissal of a formal complaint or any allegation in the complaint in accordance with the appeal procedures described in the section IV. Appeals below. If a complaint is dismissed under this policy, the conduct may still be addressed under other school policies.

III. INFORMAL RESOLUTION PROCESS

The school may offer an informal resolution process after a formal complaint has been filed at any time prior to concluding the investigation and decision-making process. The school shall not require a party to participate in the informal resolution process or to waive the right to an investigation and adjudication of a formal complaint. The informal resolution process will never be used in instances where complainant is a student and respondent is an employee.

The informal resolution process requires that the school provide the parties with written notice disclosing the allegations, the requirements of the informal resolution process, the right to

withdraw from the informal process and resume the formal complaint process. The school must obtain the parties' voluntary, written consent before initiating the informal resolution process. The school should also share with the parties the record-keeping practice of the informal process.

IV. FORMAL INVESTIGATION PROCESS

Notice of Allegations

If a formal complaint is filed, the Title IX Coordinator shall provide the known parties with written notice of the following:

1. The school's complaint process, including any informal resolution process
2. The allegations potentially constituting sexual harassment with sufficient details known at the time, including the identity of parties involved in the incident if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident if known. Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview. If, during the course of the investigation, new Title IX allegations arise about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator shall provide notice of the additional allegations to the parties.
3. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process
4. The opportunity for the parties to have an advisor of their choice who may be, but is not required to be, an attorney, and the ability to inspect and review evidence
5. The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process

The above notice shall also include the name of the investigator, facilitator of an informal process, and decision-maker and shall inform the parties that, if at any time a party has concerns regarding conflict of interest or bias regarding any of these persons, the party should immediately notify the Title IX Coordinator and/or Deputy Coordinators.

Investigation Procedures

During the investigation process, the school's designated investigator shall:

1. Provide an equal opportunity for the parties to present witnesses who can provide inculpatory and exculpatory evidence

2. Impose no restrictions on the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence
3. Provide the parties with the same opportunities to have an advisor of choice, who may be an attorney, present during the grievance proceeding,
4. Not limit the choice or presence of an advisor for either the complainant or respondent. Any restrictions related to advisor participation must apply equally to both parties
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate
6. Objectively evaluate all relevant evidence without bias and/or use of stereotypes.

Parent Access to Investigation

The parent or guardian of a student under the age of 18 must be permitted to accompany the student to meetings, interviews, and hearings during a grievance process to exercise rights on behalf of the student, while the student's advisor of choice may be a different person from the parent or guardian.

Rape Shield Protection

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Standard of Evidence

In making this determination, the decision-maker shall use the preponderance of the evidence standard for all formal complaints of Title IX sexual harassment. The same standard of evidence shall be used for formal complaints against students as for complaints against employees.

Because Title IX Sexual Harassment matters often involve allegations of lack of consent, the following definition shall be used when determining whether a party had consent from the other party to engage in the behavior at issue in an investigation.

“Consent” means words or actions by a person indicating a voluntary agreement to engage in a sex act. Additionally, a person will be deemed to have acted without consent of another when the person:

- knows that the other person is mentally incapable of understanding the nature of the sexual act;

- knows that the other person is incapable of resisting, or declining consent to, the sexual act;
- knows that the other person is unaware that a sexual act taking place; or
- knows that the other person is mentally incapable of resisting, or declining consent to, the sexual act, due to a mental condition or a psychiatric or developmental disability.

Investigation Report

At the conclusion of the investigation, the investigator will prepare an investigation report and provide this report along with an electronic or hard copy of the evidence obtained as part of the investigation to both parties and their advisors, and provide the parties at least 10 days to submit a written response for the investigator to consider prior to the completion of the investigative report and forwarding of such report to the decision-maker.

Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws. If the complaint is against an employee, rights conferred under an applicable collective bargaining agreement shall be applied to the extent they do not conflict with the Title IX requirements.

Final Written Decision

The Headmaster or designee shall identify an individual or individuals as the decision-maker to determine whether a policy violation occurred and appropriate discipline. The decision-maker(s) may not be Title IX Coordinator or investigator of the matter.

After the investigative report has been sent to the parties but before reaching a determination regarding responsibility, the decision-maker(s) shall afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

The decision-maker(s) shall issue, and simultaneously provide to both parties, a written decision as to whether the respondent is responsible for the alleged conduct.

The written decision shall be issued within 10 calendar days of the receipt of the complaint. The timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action.

The written decision shall include the following:

1. Identification of the allegations potentially constituting sexual harassment;
2. A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings

held if the school includes hearings as part of the grievance process;

3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the school's policies to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions the school imposes on the respondent, and whether remedies designed to restore or preserve equal access to the school's educational program or activity will be provided by the school to the complainant; and
6. The school's process for appeal.

V. **APPEAL**

Either party may appeal the school's dismissal of a formal complaint or decision in regard to any allegation in the complaint, for the following reasons:

- a procedural irregularity affected the outcome,
- new evidence that was previously not available is available that could affect the outcome, or
- a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome.

If an appeal is filed, the school shall:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
2. Ensure that the decision-maker(s) for the appeal is trained and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
4. Issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties

An appeal must be filed in writing within 10 calendar days of receiving the notice of the decision or dismissal, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely

and shall not be considered.

A written decision shall be provided to the parties within 20 calendar days from the receipt of the appeal.

Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights within 180 days of the date of the most recently alleged misconduct.

United States Department of Education
John W. McCormack Building
5 Post Office Square
Boston, MA 02109

An action may also be filed with the Vermont Agency on Education:

Vermont Agency of Education
1 National Life Drive
Montpelier, VT 05602
802-479-1030

The complainant shall be advised of any civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal antidiscrimination laws, if applicable.

VI. REMEDIES AND DISCIPLINARY ACTION (IF APPROPRIATE)

Remedies

When a determination of responsibility for sexual harassment has been made against the respondent, the school shall provide remedies to the complainant. Such remedies may include the same individualized services described above in the section Supportive Measures.

Corrective/Disciplinary Actions

The school shall not impose any disciplinary sanctions or other actions against a respondent until the investigation/grievance procedure has been completed and a determination of responsibility has been made.

Disciplinary actions that may be taken with a student who is determined to be responsible for sexual harassment include, but are not limited to:

1. Expulsion
2. Suspension
3. Transfer from a class or school as permitted by law
4. Parent/guardian conference
5. Education of the student regarding the impact of the conduct on others

6. Positive behavior support
7. Referral of the student to a student success team
8. Denial of participation in extracurricular or cocurricular activities or other privileges as permitted by law
9. Community service
10. Reparative Process

When an employee is found to have committed sexual harassment or retaliation, the school shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

VII. PROHIBITION AGAINST RETALIATION

The school prohibits any individual from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. If any individual experiences retaliation, they may file their own complaint of retaliation under this policy.

VIII. RECORD-KEEPING PROCEDURES

The Title IX Coordinator or designee shall maintain, for a period of seven years:

1. A record of all reported cases and Title IX investigations of sexual harassment, any determinations of responsibility, any audio or audiovisual recording and transcript if applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, and any appeal or informal resolution and the results therefrom
2. A record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, including the school's basis for its conclusion that its response was not deliberately indifferent, the measures taken that were designed to restore or preserve equal access to the education program or activity, and, if no supportive measures were provided to the complainant, the reasons that such a response was not unreasonable in light of the known circumstances
3. All materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process. The school shall make such training materials publicly available on its web site, or if the school does not maintain a web site, available upon request by members of the public.