



POLICY & PROCEDURE DOCUMENT

NUMBER: 4.8302

DIVISION: Finance and Administration

TITLE: Policy Against Sexual Harassment

DATE: August 20, 1998

REVISED: June, 2003
January, 2011

Policy for: All Employees

Authorized by: Tony Glisson, Director Human Resources

I. Purpose and Scope

Western Kentucky University (WKU) is committed to providing a working and learning environment free from sexual harassment.

II. Policy

A. General

1. It is the policy of this university that sexual harassment, in any form, will not be tolerated. Management and supervisory personnel, at all levels, are responsible for taking reasonable and necessary action(s) to **prevent** sexual harassment. All members of the university community, employees and students are required to promptly **report** conduct that could be in violation of this policy.
2. The university will take measures to periodically educate and train employees regarding conduct that could constitute a violation of this policy. All management and supervisory personnel are expected to participate in such education and training and be knowledgeable about the university's policy.
3. All members of the university community are required to comply with the policy and procedures outlined to address complaints. In addition to the procedures outlined herein, discrimination and harassment complaints may be filed with the United States (U.S.) Equal Employment Opportunity Commission (EEOC) or the U.S. Department of Education (DOE), Office for Civil Rights. Any complaint of sexual harassment filed

under the university's policy shall be processed even if the complainant also files a complaint or suit with an outside agency, such as those listed above. Retaliation against anyone who makes a complaint or participates in the complaint process will not be tolerated.

4. The university will do the following:
 - a. respond to every complaint of sexual harassment reported,
 - b. take action to provide remedies when sexual harassment is discovered,
 - c. protect the privacy of all persons involved in sexual harassment complaints to the extent it is possible.
5. The above actions will apply to the extent permitted by law or where personal safety is not an issue.

B. Definition of Sexual Harassment

1. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. It is constituted when one or all of the following occur:
 - a. submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or educational experience,
 - b. submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting such individual,
 - c. such conduct is sufficiently severe and pervasive so as to alter conditions of, have purpose or effect of substantially interfering with an individual's work or academic performance by creating an intimidating, hostile or offensive working or educational environment.
2. Harassment does not include verbal expressions or written material relevant and appropriately related to course subject matter or curriculum.
3. This policy shall not abridge academic freedom or the university's educational mission.

III. Procedure

A. Reporting Suspected Sexual Harassment

1. Any individual who believes he or she may have experienced sexual harassment, or who believes they have observed sexual harassment taking place, should **report** this information immediately to one of the **Reporting Officials** listed on the last page of this document.

2. Office locations, addresses and telephone numbers for the above officials are provided on the last page of this policy. Reports and complaints, whether informal or formal, received by the Department of Human Resources Director, the Vice President for Student Affairs or the Associate Vice President for Academic Affairs/Chief Diversity Officer must be immediately reported to the Equal Opportunity/Affirmative Action/University ADA Services Office (EAU).

Western Kentucky University Ombudspersons

3. The university has designated individuals to serve as Western Kentucky University Ombudspersons. Information concerning names, addresses and telephone numbers of these individuals is available in each of the offices listed on the last page of this document. Ombudspersons are available to provide **only information and clarification** regarding the university's policy and **are not authorized or designated to receive, investigate, resolve complaints or otherwise participate in the complainant process. Information disclosed to an Ombudsperson by anyone is confidential and therefore will not be forwarded to a Reporting Official.** The names of WKU Ombudspersons are available in the same offices, listed on the last page of this document, as the policies and at the Ombudspersons link.
4. If a complainant desires to report a complaint of sexual harassment, he/she must do so to at least one of the four Reporting Officials listed on the last page of this document, in accordance with this policy. Unless otherwise provided herein, **investigation** of sexual harassment complaints shall be the responsibility of the EAU Office ("investigator").

B. Procedures for Investigation and Resolution of Sexual Harassment Complaints

1. Unless otherwise provided herein, responsibility for the investigation of both formal and informal sexual harassment complaints shall be with the EAU Office ("investigator"). The WKU President has the authority to appoint an alternate investigator as circumstances require, and in his or her sole discretion. The procedures outlined herein shall control, in the event an alternate investigator is appointed, any provision of this policy. Complaints will be addressed as confidentially as possible considering specific circumstances of allegations to protect the rights of both the complainant and person accused. The investigator may gather information from any source(s) deemed necessary in an effort to fully investigate and resolve the complaint.

C. Investigator Conflict of Interest

1. The complainant, alleged offender and/or investigator may allege the investigator has a substantial conflict of interest. In that event, details supporting the alleged conflict of interest must be submitted in writing to The WKU President within five business days of the date the person alleging the conflict has notice of the investigator's identity. The WKU President will determine whether a conflict may exist, and, if so, he/she shall appoint an alternate investigator in an expeditious manner. The WKU President's decision is final. In the event a request for an alternate investigator is made and/or an alternate investigator is appointed, the

specific time lines provided in the policy shall be suspended pending that appointment.

D. Informal Complaint Process

1. An individual who feels he or she has been sexually harassed may desire to resolve their complaint informally. The purpose of this approach will result with no formal disciplinary action being taken against the accused individual and without the formal investigatory process. Informal complaints are not required to be made in writing. An *example* of an informal complaint is one where the complainant requests only that an appropriate university official counsel the accused individual to cease and desist the alleged conduct, and requests no other specific action(s) be taken against the accused.
2. Persons making informal complaints of sexual harassment agree and understand that **no formal disciplinary action** will be taken against the alleged offender based on an informal complaint. If the complainant chooses, he or she may, at any time prior to resolution of the informal complaint, amend the informal complaint to a formal complaint.
3. If the alleged offender elects not to participate in resolving an informal complaint, the nonparticipation will not be considered as damaging evidence, but will not change or waive the university's responsibility to investigate and make decisions based on available information.
4. The investigator may, if circumstances warrant, request for the alleged offender's immediate supervisor counsel him or her regarding the alleged conduct, and/or recommend counseling, training, education and/or other non-disciplinary actions to be implemented. Attempts to resolve an informal complaint will be completed within 30 days from the date of receipt of the complaint by the investigator. The complainant and alleged offender will be informed in writing of the outcome.

Note: The University will attempt to balance the wishes of a complainant who does not want to file a formal complaint with the university's responsibility to respond to serious allegations and take prompt and appropriate corrective action. A complainant who chooses not to proceed with a formal complaint may be asked to state that preference in writing.

E. Formal Complaint Process

1. Filing a Complaint
 - a. Formal complaints must be delivered by the complainant to one of the four Reporting Officials referenced on the last page of this document. The formal complaint must be filed as soon as possible after the alleged incident occurred or after attempts to resolve the situation informally have been unsuccessful. The formal complaint must be in writing, signed by the complainant and shall include the following information: 1) details concerning the incident or conduct initiating the complaint, 2) date and location of incident, 3) any witness to the alleged

incident or conduct and 4) action requested to resolve the complaint and prevent future violations of the policy.

F. Notifying the Person Accused and Supervisor

1. The alleged offender will be provided with a copy of the complaint by the investigator within five business days of the investigator's receipt of the complaint. The investigator will notify the supervisor of the accused person regarding the complaint, in order for the supervisor to take appropriate actions during the investigation. For example, temporary assignment or investigate leave of absence.

G. Investigative Process

1. The alleged offender will be required to submit a written response to the complaint within five business days of receipt of a complaint. A copy will be provided to the complainant by the investigator.
2. The investigator will interview the complainant and the alleged offender. Interviews may also be conducted with witnesses, supervisors and other persons who may have information about the alleged incident. The investigator may also review personnel or other records relevant to the complaint. The complainant and accused shall be permitted to suggest witnesses and other evidence that shall be considered by the investigator. All individual interviews will be audio taped and subsequently transcribed in written format. Any person interviewed shall have the right to request a review of his/her transcribed statement for accuracy.

H. Investigative Findings

1. Within 30 days of receiving the formal written complaint, the investigator will assess if a violation of policy has occurred and will submit findings in writing to the complainant and the person accused. If the investigator finds by a preponderance of evidence it is more likely than not the alleged sexual harassment has occurred, the investigator shall notify the accused person, their immediate supervisor, the Associate Vice President for Academic Affairs/Chief Diversity Officer, if the accused is a faculty member, and/or the Department of Human Resources Director, if the accused is a staff member.
2. The supervisor of the alleged offender shall be responsible for acting on the findings of the investigator. In accordance with university disciplinary policies/procedures, the supervisor shall consult with and/or notify the appropriate university administrative official(s) regarding formal disciplinary actions to be taken against the person accused.

I. Disciplinary Action

1. Within 10 business days of receiving the investigator's findings, the supervisor shall meet with the accused person to discuss the findings and recommendations and shall determine appropriate disciplinary action.

2. In making a decision regarding discipline, the supervisor shall consider properly established records of previous conduct and the seriousness of the violation. A complaint made more than 12 months after the incident shall not be the basis for formally disciplining any person accused of sexual harassment. However, where allegations of, a pattern or practice of or prior complaints of confirmed sexual harassment are made within the 12 month period, the supervisor shall consider the totality of information in determining appropriate discipline and may also take formal disciplinary action. The supervisor may also review any part of the investigative records.
3. Appropriate discipline may range from a verbal warning, to termination/dismissal for cause or any other appropriate remedial action. The investigator and the Associate Vice President for Academic Affairs/Chief Diversity Officer, if the accused is a faculty member, or the Department of Human Resources Director, if the accused is a staff member, shall be consulted regarding disciplinary decisions.
4. Both the accused person and investigator will be notified in writing of the supervisor's decision. The investigator will notify the complainant regarding the resolution of the complaint, corrective action to be taken (if applicable), and/or any discipline to be imposed.

J. Appeal of Formal Complaint Resolution/Disciplinary Action Procedure

1. Filing an Appeal

Either the complainant or person accused may file an appeal pertaining to any decision concerning the resolution of the complaint. An appeal by either party must be made in writing, delivered to the Office of The WKU President in the Wetherby Administration Building within five business days of receipt of the resolution/disciplinary decision notice.

The written appeal must state, in detail, the reason(s) for the appeal and address one or more of the following:

- a. If the appeal alleges findings of the investigator included relevant factual errors or omitted relevant facts, the appeal shall specify each alleged factual error and every relevant fact omitted from the investigation;
- b. If the appeal alleges substantive procedural errors, the person appealing shall identify each instance of said substantive procedural error;
- c. If the appeal alleges relevant and substantive issues or questions concerning Interpretation of university policy, the person appealing shall state the issues and questions supporting this allegation;
- d. If the appeal alleges new information or evidence, the person appealing shall specify the reason(s) the information was not available or provided to the investigator during the investigation, including specific reasons why said information could not have been provided on a timely basis;

- e. If the appeal alleges either the action(s) or inaction(s) of the supervisor, in response to the findings of the investigator, will not prevent future violation(s) of this policy, the person appealing shall specify, in detail, the reasons and basis for this belief/allegation.
2. No disciplinary or other action based on the complaint shall be taken against the alleged offender during the appeal process, although temporary, interim measures may remain in place. As indicated herein, the university in its discretion may at any point in the complaint process elect to place the alleged offender on administrative leave, with pay, or implement a temporary reassignment.

K. Sexual Harassment Appeal Committee

1. Appeals shall be submitted to a Sexual Harassment Appeal Committee whose members shall be selected and appointed by The WKU President. The committee will include at least one male and one female.

L. Member Appointments

1. Both the complainant and the alleged offender shall be provided with an opportunity to submit written objections within a specific time period to the appointment of any committee member(s) on the basis of that member's inability to act impartially. If The WKU President determines that a committee member cannot act impartially, an alternate appointment shall be made. The committee shall be appointed in a timely manner, considering all relevant circumstances. The WKU President's decision regarding committee appointments is final.

M. Hearing / Committee Recommendation

1. The committee will conduct a formal hearing and allow the complainant and accused person ("the party") to present relevant information, per the committee's discretion, to the allegations. If the appeal involves allegations described in item 5 found in the *Filing an Appeal* section, the committee will likewise consider the statement(s) of the supervisor. The committee shall have sole discretion regarding personal appearance of any witness, whether to consider only the party's statements and review only the written record, or any other matter regarding the conduct of the hearing. The hearing will not be considered a judicial hearing, but rather an internal hearing the complainant and the alleged offender are present. Legal counsel will not be permitted to be present during any part of the committee hearing. The formal hearing shall be audio taped and transcribed.
2. The committee's deliberations shall be closed to all persons other than the committee members and shall not be audio taped. Its recommendation will be determined by a majority vote, shall be in writing and delivered to The WKU President. It may be accompanied by a minority opinion. The appeal will be conducted and completed in an expeditious manner, considering all the circumstances.

N. President's Review and Recommendation

1. The WKU President shall review the recommendation. He or she may affirm, amend or return it for further deliberation by the committee. The WKU President's review and decision will be conducted in an expeditious manner, considering all circumstances, shall be a final decision and reported in writing to the complainant, person accused, the supervisor and the investigator.

O. Written Record of Complaints, Investigations and Resolutions/Decisions

1. Written records of complaints will be marked "CONFIDENTIAL" and will be retained in a separate, secure and locked file in the EAU Office. Records shall be retained as required by state law. Written records relating to a sexual harassment finding may be placed in an accused employee's official personnel file and include the following: 1) any document that has been mutually agreed to by the university and the person accused of harassment, 2) a letter issued by the responsible administrator to the accused person at the conclusion of a formal investigation, that notifies the accused of actions, decisions and/or other recommendations concerning the complaint and 3) a settlement agreement between the parties.

P. Dissemination of Policy

1. The policy will be made available to all employees and students. Periodic notices sent to students, employees and supervisors about the university's Policy Against Sexual Harassment will include information about the complaint procedure and refer individuals to designated offices and officials for additional information.

Q. Responsibilities of Ombudspersons

1. The following is required of each Ombudsperson: "As a university Ombudspersons, I **am available to provide only information and clarification** regarding the university's Policy against Sexual Harassment and related procedures for investigating and resolving complaints of sexual harassment. **Information or a complaint disclosed to me or any other Western Kentucky University Ombudsperson is confidential and therefore such information or complaint will not be forwarded or reported to a Reporting Official listed on the last page of this document. I am not authorized or designated to receive, investigate, resolve complaints or otherwise participate in the complainant process.** If you want to report a complaint of sexual harassment, you should contact one of the four Reporting Officials, listed below. If you request assistance, I can assist you by arranging an appointment or meeting for you with one of the Reporting Officials."
2. Any individual who believes he or she may have experienced sexual harassment, or who believes he or she has observed sexual harassment taking place, should report this information immediately to one of the Reporting Officials listed on the last page of this document.

- a. Vice President
Student Affairs
Potter Hall, Room 442
1906 College Heights Blvd. #11025

Bowling Green, KY 42101-1025
(270) 745-2791

- b. Director
Department of Human Resources
Wetherby Administration Building, G25
1906 College Heights Blvd. #11003
Bowling Green, KY 42101-1003
(270) 745-5360

- c. Director
Equal Opportunity/Affirmative Action/University ADA Services
Wetherby Administration Building, G33
1906 College Heights Blvd. #11009
Bowling Green, KY 42101-1009
(270) 745-5121

- d. Vice President for Academic Affairs/Chief Diversity Officer
Office of the Provost/Academic Affairs
Wetherby Administration Building, Room 239
1906 College Heights Blvd. #11008
Bowling Green, KY 42101-1008
(270) 745-5468

IV. Exclusions

V. Related Policies

See also:

VI. Reason for Revision

- A. Amendments to Procedures
 - 1. The university specifically reserves the right to modify and/or amend any or all procedures outlined herein at any time, in its discretion. In the event the university determines circumstances warrant modification/amendment of any part of these procedures, timely notice of same shall be delivered in writing to all relevant and affected parties.
 - 2. WKU has adopted procedures to promptly and fairly address concerns and complaints about sexual harassment. Complaints may be submitted informally or formally. If a complaint implicates or involves both this policy and any other university complaint or grievance policy or procedure, the university may, in its discretion, suspend the procedures relating to other complaints or grievance policies pending completion of the sexual harassment complaint procedures.