



POLICY & PROCEDURE DOCUMENT

NUMBER: 0.2070

DIVISION: General University

TITLE: Title IX - Sexual Misconduct/Assault

DATE: June 16, 2014

POLICY & PROCEDURE FOR: All WKU Employees and Students

AUTHORIZED BY: President

I. PURPOSE AND SCOPE

This policy sets forth guidelines and procedures intended to ensure that Western Kentucky University (WKU) continues to comply with the Violence against Women Reauthorization Act of 2013, and the Campus Sexual Violence Elimination Act of 2013.

Members of the WKU community, in addition to guests and visitors, have the right to be free from sexual misconduct and sexual violence. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. This policy is intended to establish a mechanism for determining when such conduct constitutes a violation of this policy.

When addressing student complaints, WKU reserves the right to take whatever measures it deems necessary to respond to an allegation of sexual misconduct/violence in order to protect students' rights and personal safety. **Such measures include, but are not limited to, modification of living arrangements, interim suspension from campus pending a hearing, and reporting the matter to the local police. Not all forms of sexual misconduct will be deemed as serious offenses, and the University reserves the right to impose different sanctions, ranging from a verbal warning to expulsion, depending on the severity of the offense.** The University will consider the concerns and rights of both the complainant and person accused of sexual misconduct.

This policy does not supersede or replace the WKU Discrimination and Harassment Policy 0.2040.

II. DEFINITIONS

- A. ***Sexual misconduct/assault*** is defined as actual or attempted sexual contact with another person without that person's consent. Sexual assault includes, but is not limited to, the following:
1. Intentional and unwelcome touching, coercing, or an attempt to coerce, and forcing;
 2. Involvement in any sexual contact when the victim is unable to consent;
 3. Forcing another individual to touch a person's intimate parts (defined as genital area, groin, inner thigh, buttocks, or breasts);
 4. Sexual intercourse without consent, including acts commonly referred to as 'rape'.
- B. ***Consent*** is informed, freely given, and mutual. Further descriptions are noted below:
1. If coercion, intimidation, threats, or physical force are used, there is no consent;
 2. If a person is mentally or physically incapacitated, or impaired, so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent. This includes impairment or incapacitation due to alcohol, drug consumption, being asleep, or unconscious;
 3. There is no consent when there is force, expressed or implied, or use of duress or deception upon the victim;
 4. Silence does not necessarily constitute consent;
 5. Past consent to sexual activities does not imply ongoing future consent;
 6. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent.
- C. ***Inducing incapacitation for sexual purposes*** includes using drugs, alcohol, or other means with the intent to affect or have an actual effect on the ability of an individual to consent or refuse to consent (as "consent" is defined in this policy) to sexual contact.
- D. ***Sexual exploitation*** occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses. Examples of behavior that could rise to the level of sexual exploitation include, but are not limited to, the following:
1. Prostituting another person;
 2. Non-consensual visual (e.g., video, photograph, etc.) or audio-recording of sexual activity;
 3. Non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
 4. Engaging in or facilitating non-consensual voyeurism.
- E. ***Relationship violence*** is abuse or violence between partners or former partners involving one or more of the following elements:
1. Battering that causes bodily injury;
 2. Purposely or knowingly causing reasonable apprehension of bodily injury;
 3. Emotional abuse creating apprehension of bodily injury or property damage;

4. Repeated telephonic, electronic, or other forms of communication -- anonymously or directly -- made with the intent to intimidate, terrify, harass, or threaten.
- F. **Stalking** includes repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device, or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death.
- G. **Retaliation** is action taken by an accused individual or third party against any person because that person opposed any practices forbidden under this policy, or because that person filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint or participation in an investigation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy.

III. **REPORTING SEXUAL MISCONDUCT/ASSAULT**

A. **Mandatory Employee Reporting:**

1. In order to enable WKU to respond effectively and/or proactively stop instances of sexual misconduct/assault involving students at the University, all WKU employees (e.g., part-time, full-time, temporary, intermittent, etc.) must report information they have about alleged or possible sexual misconduct/assault involving student-to-student concerns to the Office of Student Conduct (OSC), and concerns involving, but not limited to, employee-to-student, employee-to-employee, and student-to-employee to the office of Equal Employment Opportunity / Affirmative Action / University ADA Services (EEO), within 24 hours of receiving such information;
2. Employees who are statutorily prohibited from reporting such information, such as licensed health-care professionals, are exempt from these reporting requirements.
3. Upon receiving a report of alleged or possible sex-based discrimination, sexual harassment, or sexual misconduct/assault involving students only, the OSC will:
 - a) Immediately notify the University Title IX Coordinator;
 - b) Evaluate the information received and determine what further actions should be taken;
 - c) The OSC will follow the procedures described in the Discrimination Grievance Procedures, and take steps, either directly with the complainant or through a reporting employee, to provide information about the University's Sexual Assault – Sexual Misconduct Procedures, as well as available health and advocacy resources and options for criminal reporting.

B. **Victims – Reporting and/or Seeking Assistance.**

1. Victims should proceed to a safe place as soon as possible and try to preserve physical evidence.

2. Victims may seek assistance, support, and information, from any or all of the following:
- a) WKU Police Department at (270) 745-2548
 - b) WKU Counseling Services at (270) 745-3159
 - c) WKU Office of Student Conduct at (270) 745-5429
 - d) WKU Equal Employment Opportunity/Affirmative Action/University ADA Services at (270) 745-5121
 - e) WKU Title IX Coordinator at (270) 745-5398
 - f) Additional Resources:

Resources from the WKU Handbook

http://www.wku.edu/handbook/campus_community_resources.php
http://www.wku.edu/handbook/deputy_coordinators.php

Personal Services

<http://www.wku.edu/police/>
<http://www.wku.edu/heretohelp/>
www.guidanceresources.com (company ID ZB3042Q)
<http://www.hopeharbor.net/>
<http://www.lifeskills.com/>
<http://www.wku.edu/housing/halls/staff/index.php>

Medical Services

<http://www.wku.edu/healthservices/>
<http://www.mcbg.org/>
<http://tristargreenviewregional.com/home/index.dot>

Resources from the WKU Glasgow Campus

www.lifeskills.com/cs

Resources from WKU Elizabethtown/Fort Knox Campus

<http://www.communicare.org/hardin.asp>

Resources from the WKU Owensboro Campus

www.nbowensboro.org
www.rvbh.com

3. Victims should report sexual misconduct/assault to any of the following:
- a) WKU Police Department at (270) 745-2548 **or call 911**
 - b) WKU Office of Student Conduct at (270) 745-5429
 - c) WKU Equal Employment Opportunity/Affirmative Action/University ADA Services at (270) 745-5121
 - d) WKU Title IX Coordinator at (270) 745-5398

4. Victims may also seek assistance from, or report allegations of sexual misconduct, to any of the WKU Title IX Deputies, who are identified on Appendix A to this policy.
5. If the assault did not occur on campus, the above offices and officials will assist the victim with determining how and where to file a police report.

IV. **FILING A FORMAL COMPLAINT**

A. **Formal Criminal Complaints:** *Filing* a formal **criminal** complaint is different from *reporting* an incident. A formal complaint is a request for the University to investigate an incident and take appropriate action(s).

1. Persons wishing to file a formal **criminal** complaint of sexual misconduct/assault, domestic violence, dating violence, or stalking will be directed, and whenever possible escorted, to the WKU Police Department, which is primarily responsible for investigating and supervising University investigations of these complaints;
2. A complainant filing a formal **criminal** complaint is not foreclosed from also filing a formal University complaint;
3. All formal **criminal** complaints will be investigated consistent with applicable legal requirements and customary law enforcement practices. Accusers will be informed promptly of available support services, as well as legal and administrative options, if reasonably available, such as changes to housing assignments, in addition to academic and/or work schedules;
4. Accusers will be informed about the outcome of any investigation undertaken by the WKU Police Department. Under appropriate circumstances, the University will inform the campus community of reports involving sexual misconduct/assault, domestic violence, dating violence, or stalking without identifying the victim.

B. **Formal University Complaints:**

1. Formal **University** complaints may be reported to the Title IX Coordinator, who will designate the appropriate investigator;
2. A complainant filing a formal **University** complaint is not prohibited from also filing a formal criminal complaint;
3. The complainant may decide to withhold consent for the disclosure of his or her name, or other identifiable information to the alleged perpetrator; however, it should be noted that if this does occur, the University's ability to respond to the complaint may be limited;
4. A formal **University** complaint may be brought forward by someone other than the complainant. Although the complainant has the right not to file a formal complaint, there may be circumstances, such as the status of the alleged assailant or the seriousness of the offense, in which the University must

investigate and take action to protect the complainant or other members of the WKU community;

5. In addition to pursuing administrative penalties and remedies, the complainant maintains the right to pursue criminal charges;
6. Both the complainant and the accused shall be informed of the outcome, defined as the University's final conclusion about the complaint and agreed upon sanction (if applicable), of any institutional disciplinary proceeding brought forward alleging a sex offense;
7. The complainant and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding;
8. A student complainant has the right to change University housing and academic arrangements if such changes are reasonably available.

V. **INVESTIGATION PROCEDURES**

A. Receipt of a Report:

1. The Title IX Coordinator should be informed of all complaints and/or reports by the Title IX Deputies, faculty, staff, or students within 24 hours of receipt of a complaint and/or report.
2. All employee-related concerns should be reported to and handled by EEO.
3. The Director of Student Conduct shall be responsible for investigating reports involving student-to-student concerns by utilizing the following:
 - a) Both the complainant and the respondent will be:
 - I. Provided periodic status updates regarding the investigation;
 - II. Receive notification of the outcome;
 - III. Be informed of his/her right to appeal.
 - b) The OSC Director will evaluate and consider mechanisms for remedies which address both individual and community safety, including implementation of no contact orders, academic support, and adjustment of academic schedules or living arrangements.
 - c) The OSC Director will provide both the complainant and the accused with information concerning counseling or emotional support.
 - d) The OSC Director will establish contact with the accused as soon as possible following the report.
 - e) The OSC Director will have notified the student(s) in writing as to the time and place of the conference to be held by the University Disciplinary Committee (UDC) for student disciplinary matters, the nature of the problem or charge, and the information against the student(s). The Title IX Coordinator will oversee methods for concluding disciplinary action

involving, but not limited to, employee-to-student, employee-to-employee, and student-to-employee concerns.

4. Notification to the student(s) shall be made at least three days before the hearing is held. The student will meet with the Director of Student Conduct or his/her designee to discuss the UDC process and sign a conference consent form. In the student's absence, a written report of facts related to the case and all related documents will be presented and reviewed by the UDC. A decision will be made as to whether or not a violation of misconduct occurred and an appropriate sanction will be levied at that time. The Title IX Coordinator will oversee methods for concluding disciplinary action involving, but not limited to, employee-to-student, employee-to-employee, and student-to-employee concerns.
5. The Director of Student Conduct and other persons on the staff shall provide the committee with a written report facts related to the case. The designated investigator for cases involving, but not limited to, employee-to-student, employee-to-employee, and student-to-employee concerns will provide a written report of facts related to the case to the Title IX Coordinator.
6. If so desired, the student(s) may be accompanied at the hearing by a WKU faculty, staff, fellow student, or any third party approved by the University. Written approval must be secured at least three working days prior to the conference.
7. Persons accompanying the student may advise, but not represent and/or address the UDC in any fashion without permission from the UDC Chairperson.
8. Due to the delicate nature of the conference and because of the need to protect confidential records and the alleged victim, these meetings shall be otherwise closed.

VI. SANCTIONS AND CORRECTIVE ACTION

- A. If the accused perpetrator of the sexual misconduct/assault is a WKU student, the provisions of the student judicial process will apply, and may include disciplinary action if the assailant is found to be in violation of this policy.
- B. If the accused perpetrator of the assault / misconduct is a WKU employee, disciplinary action up to termination may be taken if the assailant is found to be in violation of this policy.

IV. Related Policies

[0.2040 Discrimination and Harassment Policy](#)

[1.1011 Consensual Relations Between Faculty and Students](#)

[4.8000 Standards of Conduct](#)

[4.8051 Workplace Violence](#)

[4.8500 Disciplinary Action](#)

Appendix A

WKU Title IX Coordinator:

Ms. Andrea Anderson, Assistant General Counsel
Office of the General Counsel, (270) 745-5398

WKU Title IX Deputies/Investigators:

Mr. Michael Crowe, Jr., Director
Office of Student Conduct, (270) 745-5429

Mr. Joshua Hayes, Director
Equal Employment Opportunity, (270) 745-5121

WKU Title IX Deputies:

Mr. Tony Glisson, Director - Department of Human Resources
(270) 745-5360

Ms. Lisa Schneider, Assistant to Director - Department of Athletics
(270) 745-5276

Ms. Gail Ledford, Coordinator for Student Services
Elizabethtown/Fort Knox Campus, (270) 706-8874

Dr. Richard Miller, Vice Provost/Chief Diversity Officer
Academic Affairs & Provost's Office, (270) 745-5468

Mr. Dominic Ossello, Staff Services' Commander - Police Department
(270) 745-2548

Ms. Kit Tolbert, Director of Housing Operations
Housing & Residence Life, (270) 745-2100

Mr. Bill Walter, Regional Vice Chancellor - Glasgow Campus
(270) 659-6936

Ms. Cynthia Wedding, Office Coordinator - Owensboro Campus
(270) 684-9797

Ms. Deborah Wilkins, General Counsel – Office of the General Counsel
(270) 745-5398