



**POLICY AND PROCEDURES DOCUMENT**

**NUMBER: 0.2070**

**DIVISION: General University**

**TITLE: Sex and Gender-Based Discrimination, Harassment, and Retaliation**

**POLICY AND PROCEDURES FOR: All WKU Students and Employees**

**DATE: June 16, 2014**

**REVISED: August 14, 2020, January 11, 2021**

**AUTHORIZED: President**

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**I. Purpose and Scope**

- A. The purpose of this document is to provide an equitable policy and equitable procedures for addressing, investigating, and responding to reports or complaints of **sexual harassment, sexual assault, dating violence, domestic violence, and/or stalking**. Defined herein, students, employees, complainants, respondents, and witnesses are encouraged to submit reports and complaints of alleged misconduct, in addition to allegations of retaliation based on such reports or complaints.
  
- B. Western Kentucky University (WKU) is committed to providing educational environments, workplaces, benefits, programs, and activities free from sexual harassment, sexual assault, dating violence, domestic violence, stalking, and

retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting equity in all aspects, the University has developed this policy and procedures document to provide a prompt, effective, and equitable process for those involved in an allegation of sexual harassment, sexual assault, dating violence, domestic violence, stalking, and retaliation. The University values and upholds dignity of all members of its community and strives to balance rights of all grievance process participants during what is often a difficult time for those involved.

- C. The core purpose of this document is to prohibit sexual harassment, sexual assault, dating violence, domestic violence, stalking, and retaliation. When an alleged violation of this policy is reported, allegations are subject to resolution using the process detailed below. The University specifically reserves the right to modify and/or amend the policy and procedures outlined herein as circumstances may require; affected parties will be notified in the event circumstances arise that warrant amendments.
- D. Conduct prohibited under this policy does not include verbal expressions or written materials relevant and related to course subject matter or curriculum. Furthermore, this policy shall not preclude academic freedom or WKU's educational mission.
- E. According to the Department of Education Office for Civil Rights, effective August 14, 2020 (Friday), Title IX of the Education Amendments of 1972 (Title IX) defines sexual harassment as unwelcome conduct a reasonable person would determine is so severe and pervasive and objectively offensive it effectively denies a person equal access to education or employment in the United States; sexual harassment includes sexual assault (as defined in the Clery Act). Based on this definition, allegations that do not meet the aforementioned standard will be assessed through the severe or pervasive and objectively offensive standard (e.g., Title VII, non-Title IX).

## **II. Definitions:** See [Appendix A](#)

## **III. Title IX Coordinator**

- A. The Title IX Coordinator oversees WKU's compliance with Title IX, and is primarily responsible for coordinating efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, prevent, and remedy sex and gender-based discrimination, harassment, and retaliation prohibited under this policy.
- B. The Title IX Coordinator coordinates and manages all aspects of the procedure and process, and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures.
- C. The Title IX Coordinator's administrative contact information for complaints, notice of alleged policy violations, and inquiries or concerns regarding this policy and procedures document is provided below:

Name: Deborah T. Wilkins, J.D.  
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Website: <https://www.wku.edu/titleix/>

#### IV. Report or Complaint - Process Overview

- A. Submission of a Report or Complaint of **sexual harassment, sexual assault, dating violence, domestic violence, stalking**, and/or retaliation may be communicated (e.g., telephone, email) via any of the following:

1. Title IX Website – <https://www.wku.edu/titleix/>
2. Title IX Coordinator – ([Appendix B](#))
3. A Title IX Investigator – ([Appendix B](#))
4. An Anonymous Report – <https://www.wku.edu/eeo/titleix/fileanincidentreport.php>
5. Any WKU Employee – (e.g., part-time, full-time, temporary, intermittent employees, responsible employees, officials with authority)

**Note:** All WKU employees must report information they receive about alleged or possible sexual harassment, sexual assault, dating violence, domestic violence, stalking, and/or retaliation to the Title IX Coordinator (or a Title IX Investigator) within 24 hours of receiving such information.

**Note:** Western Kentucky University employees who are statutorily prohibited from reporting such information (e.g., licensed health-care professionals) are exempt from these reporting requirements.

- B. Form of Complaint:

1. A complaint shall be a formal document filed/signed by the Complainant (or the Title IX Coordinator) and describe at least one allegation of sexual harassment, sexual assault, dating violence, domestic violence, and/or stalking on the part of a Respondent; this complaint must also include a request for WKU to investigate the allegation(s).
2. As used in the above point, reference to a “document filed/signed by the Complainant” means a document or electronic submission (e.g., email, WKU online portal) that contains the Complainant’s physical or digital signature, or otherwise indicates the Complainant is the person filing a complaint.
3. If a complaint is submitted but does not meet the above standard, the Title IX Coordinator (or a Title IX Investigator) will contact the Complainant to ensure it is filed correctly. An additional option for filing a complaint is for the Title IX Coordinator (or a Title IX Investigator) to write/type notes gathered during the conversation(s) with a Complainant, send a summary of the notes to a Complainant, and provide an opportunity for the Complainant to review, revise, approve, and sign the document.

### C. Supportive Measures

The Title IX Coordinator (or a Title IX Investigator) will make supportive measures available to a Complainant upon receiving notice of a complaint. If a formal complaint has not been submitted, and the Title IX Coordinator receives information alleging a victim is (or may have been) subjected to conduct prohibited under this policy, the Title IX Coordinator will use their best judgment to determine if contact can or should be initiated. Regardless, supportive measures will be offered to the Complainant. When supportive measures are offered, the Title IX Coordinator (or a Title IX Investigator) will inform the Complainant, in writing, that they may file a formal complaint document at any point while they are attempting to participate, as a WKU student or employee, in an education program or activity offered by WKU in the United States. When a formal complaint is filed, the Title IX Coordinator (or a Title IX Investigator) will also offer supportive measures to the Respondent.

The University will make a good faith effort to minimize academic impact on either party, and implement supportive measures in a way that does not unreasonably burden either party. These actions may include, but are not limited to, the following:

- Referral to counseling, medical, and/or other healthcare services;
- Referral to the Employee Assistance Program;
- Referral to community-based service providers;
- Assistance with Visa and immigration;
- Referral to student financial aid counseling;
- Consideration of altering campus housing assignment(s);
- Consideration of altering work arrangements for employees or student-employees;
- Assessment of safety planning;
- Request for campus safety escorts;
- Request for transportation accommodations;
- Implementation of contact limitations (e.g., no contact orders) between parties;
- Support for academics, extensions of deadlines, or other course/program-related adjustments;
- Modifications to class schedules, withdrawals, or leaves of absence;
- Request for increased security and monitoring of certain areas of campus;
- Consideration of any other action(s) deemed appropriate by the Title IX Coordinator.

### D. Initial Assessment of Report or Complaint

Following receipt of a report or complaint of **sexual harassment, sexual assault, dating violence, domestic violence, and/or stalking**, the Title IX Coordinator (or a Title IX Investigator) will perform an initial assessment based on what is shared and communicate with the Complainant as outlined in section V.A. (Receipt of Report or Complaint – Initial Assessment of Complaint) of this policy.

### E. Promptness

All allegations are acted upon promptly by the Title IX Coordinator (or a Title IX Investigator) once a formal complaint is received. Investigation of a complaint can take a number of

business days to resolve within a semester. Extenuating circumstances may cause a resolution to take longer, but the University will use its best efforts to avoid all undue delays within its control. The University will use its best efforts to provide written notice to parties regarding any delay, the cause, and an estimate of time that will be needed as a result.

F. Privacy

Every effort is made by WKU to preserve privacy of reports or complaints. The University will not share the identity of any individual who has made a report or complaint under this policy. Preservation of privacy is afforded to any Complainant, who has been reported to have violated this policy, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures. The University reserves the right to designate which University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to FERPA.

G. Jurisdiction of WKU

This policy applies to WKU education programs and activities that take place on campus, in buildings or on property owned/controlled by WKU (e.g., recognized student organizations), and/or as WKU-sponsored events. A Complainant or Respondent must be attempting to participate, as a WKU student or employee, in an education program or activity in the United States.

H. Time Limits on Reporting

There is no time limitation on providing a report or complaint to the Title IX Coordinator (or a Title IX Investigator). However, if the Complainant or Respondent is no longer subject to the University's jurisdiction, and/or a significant amount of time has passed, the ability to investigate, respond, and provide supportive measures and/or remedies may be more limited or impossible. Acting on a report or complaint significantly impacted by a passage of time (e.g., rescission or revision of policy) is at discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action as appropriate.

I. Online Harassment and Misconduct

There are WKU policies written and interpreted broadly to include online and cyber manifestations of prohibited behaviors, when those behaviors occur in (or have an effect on) WKU's education programs and activities, or use any University network, technology, or equipment.

J. Withdrawal – Resignation - Retirement During Pending Complaint

1. Student Respondents

- a) If a student Respondent has an allegation pending, WKU may place a hold on their ability to graduate and/or receive an official transcript or diploma.
- b) Should a student Respondent permanently withdraw from WKU, the resolution process will be suspended, as WKU no longer has disciplinary jurisdiction over the withdrawn student. However, a hold may be placed on their record(s) and impact their ability to be re-admitted; if circumstances justify it, the student Respondent may also be barred from University properties and/or events.

2. Employee Respondents

- a) If an employee Respondent resigns or retires while an allegation is pending, the resolution process will be suspended, as WKU no longer has disciplinary jurisdiction over the employee. However, the employee Respondent may be noted as ineligible for rehire with the University or any WKU-affiliated organization; official records retained by the Department of Human Resources, Academic Affairs and Provost's Office (as applicable), and Title IX Coordinator will reflect such status.
- b) All official University responses to future inquiries regarding employment references for the employee Respondent will include that the former employee resigned during a pending disciplinary matter.

**V. Investigation Process**

A. Receipt of Report or Complaint- Initial Assessment of Complaint

Following receipt of a report or complaint of an allegation, the Title IX Coordinator (or a Title IX Investigator) will perform an initial assessment, including but not limited to, the following:

- 1. The Title IX Coordinator (or a Title IX Investigator) will explain the grievance process to the Complainant;
- 2. The Title IX Coordinator (or a Title IX Investigator) will offer supportive measures to the Complainant;
- 3. The Title IX Coordinator (or a Title IX Investigator) will work with the Complainant to determine whether the Complainant prefers an Informal Resolution or an Administrative Resolution:
  - a) If an Informal Resolution option is preferred, the Title IX Coordinator will assess whether the complaint is suitable for informal resolution; the Title IX Coordinator may also seek to determine if the Respondent is willing to engage in an Informal Resolution.
  - b) If an Administrative Resolution is preferred, the Title IX Coordinator will initiate the investigation process and determine whether the scope of the investigation will address any (or all) of the following:
    - 1) An incident;
    - 2) A potential pattern of misconduct;
    - 3) A culture/climate issue.

Based on the initial assessment, the Title IX Coordinator will initiate one of two responses:

- 1. Informal Resolution: typically used for less serious offenses and only when all parties

agree to an Alternate Resolution, or when the Respondent is willing to accept responsibility for violating policy. This can also include a remedies-only response.

2. Administrative Resolution: investigation of allegations, with a formal hearing that will be audio-recorded, subject to an Advisor for the Complainant and an Advisor for the Respondent to assist with the pre-hearing, hearing, and cross-examinations; a determination by a Hearing Officer/Decision-Maker on whether a policy violation occurred; and the opportunity to appeal that decision to an Appeal Officer/Decision-Maker. An appeal may only be pursued for the following reasons justifiably believed to have impacted the outcome: (a) a procedural error; (b) new evidence not reasonably available at the time; and (c) bias or a conflict of interest from the Title IX Coordinator, a Title IX Investigator, or the Hearing Officer/Decision-Maker.

#### B. Dismissal (Mandatory and Discretionary)

1. The University must dismiss a complaint or any allegation therein if at any time during the investigation or hearing, it is determined that any (or all) of the following are pertinent:
  - a) Conduct alleged in the formal complaint would not constitute sexual harassment as defined in this policy, even if proved;
  - b) Conduct did not occur in an educational program or activity controlled by WKU (e.g., buildings, properties, recognized student organizations);
  - c) The University does not have control of the Respondent;
  - d) Conduct did not occur against a person in the United States;
  - e) At the time of filing a formal complaint, a Complainant is not participating in (or attempting to participate in) a WKU education program or activity.
2. The University may dismiss a formal complaint or any allegations therein if at any time during the investigation or hearing, any of (but not limited to) the following occur:
  - a) A Complainant notifies the Title IX Coordinator, in writing, that they would like to withdraw their formal complaint or any allegation(s) therein;
  - b) The Respondent is no longer enrolled at, or employed by, WKU;
  - c) Specific circumstances prevent WKU from gathering evidence sufficient to reach a determination as to the formal complaint or allegation(s) therein.
3. Upon any dismissal, the Title IX Coordinator will promptly and simultaneously send written notice of the dismissal (and rationale for doing so) to each party.
4. This dismissal decision is appealable by any party under the procedures for appeal.

### VI. Resolution Process

- A. Title IX Investigators: The resolution processes may rely on additional University officials (e.g., Title IX Investigators) to carry out certain parts of the process. Each of the Title IX Investigators are trained in all aspects of the resolution process and can serve in any of the

following roles, at discretion of the Title IX Coordinator, so long as they were not involved in the initial report or complaint intake:

- Provide equitable intake for, and initial advice pertaining to, allegations;
- Act as optional process Advisors to parties;
- Facilitate Informal Resolution;
- Facilitate Administrative Resolution;
- Investigate allegations.

B. Advisor to Complainant – Advisor to Respondent Expectations

1. Each party is permitted to choose an Advisor.
2. Each party is expected to inform the Investigator(s) of their Advisor at least two business days before their first meeting with the Investigator(s) or as soon as possible if a more expeditious meeting is necessary or desired.
3. Either party may elect to change Advisors during the process, as they are not obligated to use the same Advisor throughout. A party must provide timely notice to the Title IX Coordinator (or a Title IX Investigator) if they change Advisors at any time.

C. Informal Resolution

Informal Resolution is when parties voluntarily agree to resolve the matter through mediation, the Respondent accepts responsibility of the alleged behavior(s), or when the Title IX Coordinator can resolve the matter by providing remedies.

1. It is not necessary to pursue Informal Resolution first in order to pursue Administrative Resolution; any party participating in an Informal Resolution can stop the process at any time and request an Administrative Resolution. Further, if an Informal Resolution fails after the fact, an Administrative Resolution may be pursued.
2. The Title IX Coordinator will determine if an Informal Resolution is appropriate, based on the willingness of parties, nature of the alleged conduct, and susceptibility of conduct permitted to the Informal Resolution process. The Title IX Coordinator, with consent of the parties, may negotiate and implement any agreement to resolve the allegations that satisfy all parties and WKU. All records of any resolution will be maintained; failure to abide by the resolution can result in appropriate enforcement actions.
3. Allegations filed against an employee that are severe and pervasive and objectively offensive, cannot proceed informally; these allegations must continue via the Administrative Resolution process unless noted under the Withdraw – Resignation – Retirement During Pending Complaint section of this policy (see Section IV.J.).

D. Administrative Resolution with Hearing

1. Administrative Resolution can be pursued for any alleged behavior, for which the Respondent has not accepted responsibility at any time during the process that



constitutes conduct covered within this document. Administrative Resolution starts with a thorough, reliable, and impartial investigation, and proceeds to a hearing.

2. If Administrative Resolution is initiated, the Title IX Coordinator (or a Title IX Investigator) will provide a written Notice of Allegation(s) and Investigation to the Complainant and Respondent at an appropriate time during the investigation.
3. The Notice of Allegation(s) and Investigation will be delivered by one or more of the following methods: in-person, by mail to the local or permanent address of the parties as indicated in official University records (which will be confirmed by each party prior to use of this option), or via email to each party's WKU-issued email address. Once received in-person, by mail, and/or via email, notice will be presumptively delivered.
4. The University will make every good faith effort to complete the investigation within a prompt and reasonable timeframe, which can be extended as necessary by the Title IX Coordinator, with notice to the parties as appropriate.
5. Upon commencement of an investigation, the Title IX Coordinator may appoint and assign one or more investigators to ensure impartiality and eliminate potential conflicts of interest.
6. Any action taken by WKU is not typically altered or precluded on the grounds that civil or criminal charges, involving the underlying incident(s), have been filed or that civil or criminal charges have been dismissed or reduced.

#### E. Investigation

Investigations involve interviews with all relevant parties and witnesses, obtaining evidence, and identifying sources of expert information as necessary. Through the investigation process, all parties have a full and fair opportunity to suggest witnesses, offer questions to be asked, provide evidence, and fully review and respond to all evidence. An investigation will proceed under the presumption that the Respondent has not engaged in conduct in violation of this policy until such a determination is made as part of the Resolution Process or Appeal. An investigation typically involves the following steps (not necessarily accomplished in the below order):

1. Meet with Complainant, conduct initial assessment, and provide supportive measures (see Section V.A.).
2. Assess if allegations are severe and pervasive and objectively offensive, and determine implementation of the Informal Resolution Process (unless an employee is the Respondent) or Administrative Resolution Process.
3. Implement remedies, if Informal Resolution Process is selected.
4. Develop an investigation plan, a list of witnesses, evidence prospects, an investigation timeframe, and a potential order of interviews for parties and witnesses, if Administrative Resolution Process is selected.
5. Prepare Notice of Allegation(s) and Investigation on the basis of initial assessment and selection of Administrative Resolution Process, which includes a description of the grievance process, and sufficient time to prepare a response before their initial interview. The written notice should include:
  - a) The identity of the parties (if known);
  - b) The conduct alleged to be sexual harassment as defined herein;
  - c) The alleged incident's date and location;

- d) A statement that the Respondent is presumed not responsible until a determination is made at the end of the resolution process;
  - e) A statement informing students that they are entitled to the Advisor of their choice;
  - f) A statement informing the parties of any conduct code and/or policy provisions that prohibit knowingly making false statements;
  - g) A statement instructing parties to preserve any evidence directly related;
  - h) An updated notice in the event additional allegations are later made.
6. Interview the parties and witnesses:
    - a) Each party will be notified, in advance when possible, of any meeting or interview involving the other party;
    - b) Each party will be given the opportunity to suggest questions for the Investigator(s) to ask of the other party and witnesses;
    - c) Each party will be provided with regular status updates throughout the investigation;
    - d) Prior to conclusion of the investigation, parties are provided a list of witnesses whose information will be used in the investigation report.
  7. Ensure an objective evaluation of all relevant evidence, both inculpatory and exculpatory.
  8. Write a comprehensive draft report that fully summarizes the investigation and all relevant and directly-related evidence.
  9. Provide parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, and credibility assessments.
  10. Provide each party with a full and fair opportunity to respond to the report in writing within five days, and incorporate that response into the final report prior to it being submitted for a hearing.

## **VII. Hearing**

### **A. Referral for Hearing - Appointment of Hearing Officer/Decision-Maker**

1. The Title IX Coordinator will refer the matter for a hearing, once the investigation report is shared with the parties.
2. The hearing will not be scheduled less than 10 business days from when the final investigation report is provided to both parties, their Advisor, and the Hearing Officer/Decision-Maker, except in instances where all parties and the Hearing Officer/Decision-Maker agree to an expedited timeline.
3. The Hearing Officer/Decision-Maker will be an attorney who is appointed to preside over a hearing, who is licensed to practice law in the Commonwealth of Kentucky courts.
4. The Hearing Officer/Decision-Maker will be responsible for:
  - a) Maintaining order and determining the sequence of events during a hearing;
  - b) Directing any person who fails to comply with procedures during the hearing, and/or any person who disrupts or obstructs the hearing, to leave.
5. The Hearing Officer/Decision-Maker is the leader for assessing all evidentiary and procedural issues.
6. The Hearing Officer/Decision-Maker will not be an employee or contractor of the University or any of its affiliated organizations.

7. The Title IX Coordinator may serve as an administrative facilitator of the hearing, if no prior conflict of interest exists, otherwise a designee may fulfill this role.
8. The University Disciplinary Committee Chair will identify no less than three faculty and/or staff Committee members to attend the hearing.
9. If/When the Hearing Officer/Decision-Maker finds a violation of policy (i.e., preponderance of evidence), these University Disciplinary Committee members will render appropriate sanctions in accordance with University policy.

**B. Notice of Hearing**

1. No less than 10 business days prior to the hearing, the Title IX Coordinator or Hearing Officer/Decision-Maker will send notice of the hearing to parties. Once received in-person, by mail, and/or via email, notice will be presumptively delivered.
2. The Notice of Hearing will contain the following:
  - a) A description of allegations, a list of all policies allegedly violated, a description of applicable procedures, and a statement of potential sanctions/responsive actions that could result;
  - b) The time, date, and location of the hearing and a reminder that attendance is strongly recommended; a lack of attendance will result in a party's perspective not being heard;
  - c) Notification that the hearing will be held in the absence of any party or witness who does not appear at the scheduled hearing, and any party's or witness' testimony and any statements given prior to the hearing will not be considered by the Hearing Officer/Decision-Maker;
  - d) A list of all those who will attend the hearing, along with an invitation to object to the Hearing Officer/Decision-Maker on the basis of demonstrated bias; this must be raised with the Title IX Coordinator at least five business days prior to the hearing;
  - e) Notification that each party's Advisor will be required to be present at the hearing for any questions they may desire to ask; the party must notify the Title IX Coordinator if they do not have an Advisor, and the University will appoint one; each party must have an Advisor present at the hearing, as there are no exceptions;
  - f) A copy of all the materials provided to the Hearing Officer/Decision-Maker about the matter, unless they have already been provided;
  - g) An invitation for each party to submit an impact statement to the Hearing Officer/Decision-Maker (during the pre-hearing) who will review the statement during any sanction determination;
  - h) An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance and/or interpretation services, which should be communicated at least seven business days prior to any hearing.

**C. Pre-Hearing Meeting/Evidentiary Considerations**

1. The Hearing Officer/Decision-Maker may convene a pre-hearing meeting with the parties and their advisors for purposes of:
  - a) Allowing parties to submit questions or topics they wish to ask or discuss at the hearing, so the Hearing Officer/Decision-Maker can rule on their

- relevance or provide recommendations for more appropriate phrasing.
- b) Deciding in advance of the hearing, if certain witnesses can be excused from appearing at the hearing due to their testimony being adequately summarized in the investigation report and deemed not relevant (or directly related).
  - c) Hearing parties' arguments related to determinations in the final investigation report concerning the relevancy of evidence (e.g., relevant or not relevant, directly related but not relevant).

## 2. Evidentiary Considerations

The investigation does not consider: 1) incidents not directly related to any possible violation, unless they evidence a pattern; 2) character of the parties; or 3) questions and evidence about the Complainant's or Respondent's sexual predisposition or prior sexual behavior, unless such questions and evidence about prior sexual behavior(s) 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.

## D. Hearing Procedure

1. The Hearing Officer/Decision-Maker has the authority to hear and make determinations on all allegations under this policy.
2. Participants at the hearing will include the Hearing Officer/Decision-Maker, the hearing facilitator (if someone other than the Title IX Coordinator), the Investigator(s) who conducted the investigation (if someone other than, or in addition to, the Title IX Coordinator), the parties, the Advisor for each party, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations or assistive services.
3. The Hearing Officer/Decision-Maker will answer all questions regarding the hearing procedure.
4. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.
5. The Hearing Officer/Decision-Maker will allow witnesses, who have relevant information, to appear at a portion of the hearing in order to respond to specific questions from the Hearing Officer/Decision-Maker. When finished with their statement(s), witnesses will then be excused.
6. At least three University Disciplinary Committee members shall be present during all aspects of the hearing to observe and assess proceedings, should sanctions be appropriate; however, no Committee member shall participate in the live hearing (e.g., cannot question parties, cannot speak with witnesses, cannot express opinions).

## E. Order of the Hearing

1. The Hearing Officer/Decision-Maker and the parties (through their Advisor) will be permitted to question the Investigator who prepared the final investigation report,

- including items that are contested and those that are not.
2. Once the Investigator presents the report and is questioned, the parties and witnesses may provide relevant information, beginning with the Complainant, and then in the order determined by the Hearing Officer/Decision-Maker.
  3. The parties and witnesses will submit to questioning by the Hearing Officer/Decision-Maker and then by the parties through their Advisors (“cross-examination”).
  4. All questions are subject to a relevance determination by the Hearing Officer/Decision-Maker. Each Advisor, who will remain seated during questioning, will pose a proposed question orally, the proceeding will pause to allow the Hearing Officer/Decision-Maker to consider it and determine whether the question will be permitted, disallowed, or rephrased.
  5. If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting or they attend but refuse to participate in questioning, the Hearing Officer/Decision-Maker may not rely on any statement made by that party or witness prior to the hearing (including those contained in the investigation report) in the ultimate determination of responsibility.

F. Standard of Proof - Notice of Outcome

1. Standard of Proof: The Hearing Officer/Decision-Maker will adjourn the hearing to deliberate the matter and determine whether the Respondent is responsible, or not responsible, for the policy violation(s) in question. The preponderance of the evidence standard of proof will be used.
2. At discretion of the Hearing Officer/Decision-Maker, University Disciplinary Committee members may provide input or assistance while the Hearing Officer/Decision-Maker deliberates.
3. If/When the Hearing Officer/Decision-Maker determines a violation has occurred, the University Disciplinary Committee members will determine appropriate remedies and/or disciplinary sanctions, which shall be incorporated into the Hearing Officer/Decision-Maker’s Notice of Outcome.
4. Notice of Outcome:
  - a) The Hearing Officer/Decision-Maker will prepare a written Notice of Outcome, detailing the determination, rationale, evidence used in support of its determination, evidence disregarded, credibility assessments (if pertinent), in addition to remedies and/or disciplinary sanctions.
  - b) The Notice of Outcome will also include information concerning relevant procedures and bases for appeal of the outcome, and when the outcome is considered final.
  - c) The Notice of Outcome will be submitted to the Title IX Coordinator within seven business days (post conclusion of the hearing), unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties and also communicate the date a decision will be delivered.

d) The Notice of Outcome will be shared simultaneously with the parties in writing, and may be delivered by one or more of the following methods: in-person, by mail to the local or permanent address of the parties as indicated in official University records (which will be confirmed by each party prior to use of this option), or via email to each party's WKU-issued email address. Once received in-person, by mail, and/or via email, notice will be presumptively delivered.

#### G. Sanctions

1. For a Notice of Outcome where both the Complainant and Respondent are/were students at WKU, in accordance with the Student Handbook, the **Office of Student Conduct** shall be responsible for carrying out any appropriate disciplinary sanction(s) imposed.
2. For any other Notice of Outcome involving violations of this policy, the below should be implemented:
  - a) If the Respondent is a student, in accordance with the Student Handbook, the Office of Student Conduct shall carry out any appropriate disciplinary sanction(s) imposed.
  - b) If the Respondent is a faculty employee, their Department Head, Dean, and/or Vice Provost, all noted as officials with authority, shall determine appropriate discipline and/or action.
  - c) If the Respondent is a staff employee, their immediate supervisors, also noted as officials with authority, and the Director of Human Resources, shall determine appropriate discipline and/or action.
3. The Title IX Coordinator shall be informed, in writing, no later than 10 business days after any sanction (for students) and discipline and/or action (for employees), is administered as a result of any Notice of Outcome.
4. The Title IX Coordinator and Director of Equal Employment Opportunity/Affirmative Action/University ADA Services may also inform other administrators of any sanctions, disciplines, and/or actions as appropriate.

#### VIII. **Appeals**

Any party may file a Request for Appeal, but this request must be submitted in writing to the Title IX Coordinator within five business days of delivery of the Notice of Outcome. An Appeal Officer/Decision-Maker, not previously involved in the process, will be appointed to consider and rule on the Request for Appeal.

#### A. Appeal Considerations

1. The Appeal Officer/Decision-Maker shall first determine if the request meets the required grounds for appeal and is timely filed.
2. Decisions on appeal are intended to be deferential to the original decision, making changes to the finding only when there is clear error and only if there is a

compelling justification to do so.

3. The Appeal Officer/Decision-Maker is confined to a review of the written documentation and audio-recorded materials of the original hearing and pertinent documentation regarding the specific grounds for appeal.
4. An appeal is not an opportunity for the Appeal Officer/Decision-Maker to substitute their judgment in place of the original Hearing Officer/Decision-Maker.
5. The Appeal Officer/Decision-Maker may consult with the Title IX Coordinator on questions of procedure or rationale for clarification, if needed. Documentation of all such consultations will be maintained.

## B. Grounds for Appeal

1. Appeals are limited to the following grounds:
  - a) Procedural error/irregularity that affected the outcome of the matter;
  - b) New evidence that was not reasonably available at the time a determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
  - c) The Title IX Coordinator, Investigator(s), or Hearing Officer/Decision-Maker had a conflict of interest or bias for or against a Complainant or Respondent that affected the outcome of the matter.
2. If any of the basis/arguments in the Request for Appeal do not meet the grounds in this policy, that request will be denied by the Appeal Decision-Maker, who will notify the parties and their advisors in writing of the denial and rationale.
3. If any of the basis/arguments in the Request for Appeal meet the grounds in this policy, the Appeal Officer/Decision-Maker will notify the parties and their advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Hearing Officer/Decision-Maker.
  - a) Each of the foregoing will be provided to parties and their advisors, from the Appeal Officer/Decision-Maker, in-person, by mail, and/or via email and afforded five business days for parties and their advisors to submit a response to the portion of the appeal that was approved and involves them.
  - b) The Appeal Officer/Decision-Maker will render a decision within five business days, barring exigent circumstances, and applying the preponderance of the evidence standard.

## C. Decision on Appeal/Final Outcome

1. Notice of the decision regarding a Request for Appeal outcome will be sent to all parties simultaneously, specifying the finding on each ground for appeal, any specific instructions for remand or reconsideration (if applicable), and the rationale supporting the essential findings.
2. Notification will be made in writing and may be delivered by one or more of the following methods: in-person, by mail to the local or permanent address of the parties as indicated in official University records (which will be confirmed by each party prior to use of this option), or via email to each party's WKU-issued email address. Once received in-person, by mail, and/or via email, notice will be

presumptively delivered.

3. Once an appeal is decided, the outcome is final: no further appeal will be permitted.

## **IX. Additional Complaint Options**

In addition to the procedures outlined herein, discrimination and harassment complaints may be filed with the U.S. Equal Employment Opportunity Commission or U.S. Department of Education Office for Civil Rights. Any complaint filed under the University's policy shall be processed even if the complainant also files a complaint or suit with an outside agency, U.S. Equal Employment Opportunity Commission, or U.S. Department of Education Office for Civil Rights. Contact information for these agencies: U.S. Department of Education Office for Civil Rights – The Wanamaker Building, Suite 515, 100 Penn Square East, Philadelphia, PA 19107, (215) 656-8548; the Kentucky Commission on Human Rights – 832 Capital Plaza, 500 Metro Street, Frankfort, Kentucky, 60601, (502) 595-4024 or (800) 292-5566; or the Equal Employment Opportunity Commission – 600 Martin Luther King, Jr. Place, Suite 269, Louisville, Kentucky 40202, (502) 582-5851.

## **X. Related Policies**

See also:

0.2040 – Discrimination and Harassment Policy

1.1014 – Consensual Relationships Between Faculty and Students

1.1700/4.2700 – Religious and Cultural Observations

4.8000 – Standards of Conduct

4.8051 – Workplace Violence

6.1010 – Student Grievance Procedure Under Section 504 and Title II

### **Revision Notes:**

August 14, 2020 – Policy substantially revised based on the Department of Education Office for Civil Rights' amendments to regulations implementing Title IX issued on May 19, 2020.

January 11, 2021 – Policy revised based on technical assistance document issued by the Department of Education, Office for Civil Rights, on September 4, 2020, and on non-substantive revisions recommended via campus feedback, through December 18, 2020.



## APPENDIX A: DEFINITIONS

- A. Sexual Harassment: Conduct on the basis of sex that occurs in the University's education program or education activity, and satisfies one or more of the following:
1. An employee of the University conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct. This type of sexual harassment is also referred to as Quid Pro Quo;
  2. Unwelcome conduct determined by a reasonable person to be so severe, and pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity. This type of sexual harassment is also referred to as a Hostile Environment; and/or
  3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a) (10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a) (30).
- B. Sexual Assault: A form of sexual harassment or sexual misconduct. The federal regulation uses the definition 20 U.S.C. 1092(f)(6)(A)(v), which defines sexual assault as an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
1. Forcible Sex Offenses: Any sexual act directed against another person (without consent) including instances, in which the person is incapable of giving consent. The following are also included as Forcible Sex Offenses:
    - a) Forcible Rape: Penetration, no matter how slight, of the vagina or anus with any body part (or object), or oral penetration by a sex organ of another person, without consent of the person.
    - b) Forcible Sodomy: Oral or anal sexual intercourse with another person that is forced and/or against that person's will (non-consensually); oral or anal sexual intercourse with another person that is not forced or against the person's will, in which the person is incapable of giving consent (e.g., age, temporary or permanent mental or physical incapacity).
    - c) Sexual Assault with an Object: Use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually); use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, not forcibly, and/or against the person's will, in which the person is

incapable of giving consent (e.g., age, temporary or permanent mental or physical incapacity).

- d) **Forcible Fondling:** Touching of the private body parts of another person (e.g., buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually); touching of the private body parts of another person (e.g., buttocks, groin, breasts), for the purpose of sexual gratification, not forcibly, and/or against the person's will, in which the person is incapable of giving consent (e.g., age, temporary or permanent mental or physical incapacity).

2. Non-Forcible Sex Offenses: Unlawful, non-forcible sexual intercourse.

- a) **Incest:** Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Kentucky law.
- b) **Statutory Rape:** Non-forcible sexual intercourse, with a person who is under the statutory age of consent in Kentucky.

C. Dating Violence: A form of sexual harassment or sexual misconduct as defined in 34 U.S.C. 12291(a) (10) as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship is determined based on consideration of the following factors:

- a) Length of the relationship;
- b) Type of relationship;
- c) Frequency of interaction between the persons involved in the relationship.

D. Domestic Violence: A form of sexual harassment or sexual misconduct. The federal regulation uses the definition in 34 U.S.C. 12291(a)(8), which defines dating violence as felony or misdemeanor crimes of violence 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 cohabitating with or has cohabitated 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 Kentucky; or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Kentucky.

E. Stalking: A form of sexual harassment or sexual misconduct. The federal regulation uses the definition in 34 USC § 12291(a) (30), which is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional

distress. Course of conduct is defined as two or more acts that include, but are not limited to, the stalker directly or indirectly (e.g., through third parties), by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to (or about) a person or interferes with a person's property. Substantial emotional distress is defined as significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. A reasonable person is defined as someone who is sensible and approaches situations with objectivity.

- F. Retaliation: Retaliation occurs when an adverse action is taken against an individual because they reported a violation of this policy, filed a formal complaint, and/or participated in an investigation of a discrimination or harassment report.

## APPENDIX B: CONTACT INFORMATION

### Title IX Coordinator

#### **Ms. Deborah Wilkins**

Title IX Coordinator and Senior Advisor to the President  
Office of the Provost and Office of the President  
Downing Student Union (across from Diddle Arena) – Suite 2096  
Email: [deborah.wilkins@wku.edu](mailto:deborah.wilkins@wku.edu)  
Phone: (270) 745-5396

### Title IX Investigators

#### **Mr. Michael Crowe**

Director and Title IX Investigator (e.g., student-to-student)  
Office of Student Conduct  
Potter Hall (across from the Wetherby Administration Building) – Room 425  
Email: [student.conduct@wku.edu](mailto:student.conduct@wku.edu)  
Phone: (270) 745-5429

#### **Mr. Joshua Hayes**

Director and Title IX Investigator (e.g., employee-to-employee, student-to-employee)  
Equal Employment Opportunity/Affirmative Action/University ADA Services  
Wetherby Administration Building (across from Potter Hall) – Room G33  
Email: [joshua.hayes@wku.edu](mailto:joshua.hayes@wku.edu)  
Phone: (270) 745-5121