

Regulation and Procedure

1. Non-Discrimination—(Harassment, Sexual violence, and Retaliation).

- 1.1 University Commitment to Equal Opportunity.** Washburn University is committed to providing an environment for individuals to pursue educational and employment opportunities free from discrimination and/or harassment. The University prohibits discrimination on the basis of race, color, religion, age, national origin, ancestry, disability, sex, sexual orientation, gender identity, genetic information, veteran status, or marital or parental status (hereafter referred to as protected status). Each unit within the University is charged with conducting its programs and activities in accordance with the University's commitment to equal opportunity for all.
 - 1.1.1.** Sex discrimination is prohibited by Federal law and University policy includes sexual harassment and sexual violence as defined in Section 1.28 and 1.29.
 - 1.1.2.** If a violation of the policy is found, the University will take immediate action to eliminate the hostile environment, prevent its recurrence and remedy the discriminatory effect.
- 1.2 Equal Educational Opportunity.** Equal educational opportunity includes, but is not limited to, admissions, recruitment, extracurricular programs and activities, counseling and testing, financial aid, health services, and employment.
- 1.3 Equal Employment Opportunity.** Equal employment opportunity includes, but is not limited to, recruitment, hiring, assignment of duties, tenure and promotion determinations, compensation, benefits, training, and termination.
- 1.4 Responsibility.** Responsibility for monitoring and implementation of this policy is delegated to the Equal Opportunity Director, who is designated as our Title IX Coordinator; however, all Employees will share in the specific activities necessary to achieve these goals.
 - 1.4.1 The Equal Opportunity Director** Phone: 785-670-1509. Email: eodirector@washburn.edu. The EOD also serves as the Title IX and ADA Coordinator. (In this policy, hereinafter referred to as EOD/Title IX Coordinator.)
 - 1.4.2.** Responsibility for maintaining a harassment free campus environment rests with all Employees and Students, and others while on the University campus or involved in University-sponsored activities.
 - 1.4.3.** Any faculty member, anyone in an Administrative Position, or anyone in a supervisor position who becomes aware of sexual harassment on campus or during University-sponsored activities must take steps to prevent its recurrence and must report the matter to the EOD/Title IX Coordinator.
 - 1.4.4.** Anyone deemed a "Responsible Employee" as defined below who becomes aware of an incident of sexual violence must report the matter to the EOD/Title IX Coordinator.
 - 1.4.5.** Any employee who becomes aware of any type of harassment should report the matter to the Employee's supervisor and/or the EOD/Title IX Coordinator.
- 1.5 Who is Covered.** The policy covers employees, students, applicants for employment or admission, contractors, vendors, visitors, guests, and participants in University-sponsored programs or activities. All individuals, regardless of sexual orientation of either party,

are subject to this policy. This means that it applies to conduct between two students, between an employee and student, and between an employee or student and a non-employee or non-student (third-party).

1.5.1. The policy applies whether behavior occurs on or off campus if the conduct adversely impacts an individual's equal educational or employment opportunity on campus, or the conduct poses an imminent or continuing threat to the safety of the University community.

1.5.2. All persons covered under this policy are required to fully cooperate with the EOD/Title IX Coordinator during an investigation and to provide information and materials such as official personnel or student files and records, and other materials necessary to complete a thorough review of complaints. All information, materials, and proceedings will be kept confidential and only shared with those who have a legitimate need to know.

Also see Section 2.6 for more detailed confidentiality provisions and Section 1.8 and 2.9 for retaliation provisions.

1.6 Complaints. Complaints of discrimination or harassment are to be made to the EOD/Title IX Coordinator. See Section A. of Regulations and Procedures for the process and more information.

1.7 Sanctions. Persons who violate this policy are subject to sanctions, up to and including exclusion from the campus, dismissal from employment, or expulsion from the University. A list of all possible sanctions the University may impose can be found in the regulations in Section 3.6.

1.6.1. For third-parties found to violate the policy, the University's ability to take action may be limited. The University will take steps to provide appropriate remedies to the extent possible, while providing support (options as in Section 2) for the Complainant and campus community.

1.8 Retaliation. Retaliation against any person is prohibited under this policy and may result in sanctions or other disciplinary action. See 1.27 for the definition of retaliation.

1.9 False Complaints, Misleading Information, or Breach of Confidentiality. Persons who knowingly file a false complaint, provide false or misleading information, or violate the confidentiality provision of this policy are subject to disciplinary action. Disciplinary action will not be taken against persons who make a good faith complaint, even if the allegations are not substantiated.

1.10 Accommodations. Consistent with state and federal laws, reasonable accommodations will be provided to those with a qualified disability.

1.11. Academic Freedom. This policy shall not be construed or applied to restrict academic freedom at the University, nor shall it be construed to restrict constitutionally protected expression, even though such expression may be offensive, unpleasant, or even hateful.

1.12. Record Retention. The EOD/Title IX Coordinator will maintain records of all reports, decisions, and other documents under this Policy in order to track patterns and systemic behaviors. All documents will be retained for five years after the case was closed.

Definitions

1.13 Business Day. Any weekday (Monday through Friday) when the University is open for business.

1.14 Complainant. The individual who files a complaint alleging conduct by another that violates this policy.

1.14.1. The University will serve as a Complainant in cases that do not involve a victim, where a victim is not a University member, when a victim requests confidentiality or when a victim is unwilling to proceed but the University determines an investigation should be conducted.

1.15 Conduct Code Officer. As used in this policy, it means an individual authorized to take disciplinary action or impose sanctions according to applicable student code provisions, employment policies and procedures, and collective bargaining agreements, or his or her designee. For undergraduate and most graduate students, it is the Associate Vice President for Student Life; for law students, it is the Associate Dean for Student Affairs; for WIT students it is Associate Dean of Student Services; for administrative and classified employees, it is the Vice President of Administration and Treasurer; for faculty, it is the Vice President of Academic Affairs.

1.16 Consent. Consent is the communication of an affirmative, conscious and freely-made decision by each party to engage in agreed upon forms of sexual contact. Consent is not to be inferred from silence, passivity, or a lack of resistance.

1.16.1. There is no requirement that an individual verbally or physically resist unwelcome sexual contact for there to be a violation of this Policy.

- Consent is not to be inferred from an existing or previous dating or sexual relationship.
- Consent to one form of sexual contact does not constitute consent to any other form of sexual contact.
- Consent with one person does not constitute consent to sexual contact with any other person.
- Consent on one occasion is not consent to engage in sexual contact on another occasion.
- Consent cannot be obtained by coercion or force.
- Consent cannot be obtained in any situation involving sexual contact with an individual who is incapacitated and the person engaging in that sexual contact, knew, or should have reasonably known, that the individual was incapacitated. "Should have reasonably known" means what a sober, reasonable person in similar circumstances should have known.

1.16.2. Consent may be withdrawn at any time. Once consent is withdrawn, the sexual contact must cease immediately.

1.17 Dating Violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the length of the relationship,

the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

1.17.1. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. It does not include acts covered under the definition of domestic violence.

1.17.2. This definition is used for these policy purposes and is also considered a crime for Clery reporting purposes. Kansas statutes do not define this crime.

1.18 Discrimination. Behavior (verbal, physical, electronic, or other behavior) directed at an individual based on his/her protected status where (1) the individual is treated adversely without a legitimate, nondiscriminatory reason for the treatment, or (2) seemingly neutral policies, practices, or requirements have a disparate impact on employment, on-campus housing, or academic opportunities of a person's protected status without a valid business or academic reason. Discrimination includes failing to provide reasonable accommodations to a qualified individual with a disability and/or religious beliefs. (See WUPRPM Section A.13. Religious Accommodations.)

1.18.1. Sex Discrimination includes sexual harassment and sexual violence.

1.19 Domestic Violence. Felony or misdemeanor crimes of violence committed by a current or former family or household member.

1.19.1. Family or household member means persons 18 years of age or older who are spouses, former spouses, intimate partner, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

1.19.2. Kansas Statutes define the crime of domestic violence as 1) knowingly or recklessly causing bodily harm by a family or household member against a family or household member; or 2) knowingly causing physical contact with a family or household member by a family or household member when done in a rude, insulting or angry manner. See K.S.A. 21-5414

1.20 Educational Environment. Includes but is not limited to: admission, academic standing, grades, assignments, etc.

1.21 Harassment. Harassment is a form of discrimination and is defined as unwelcome verbal, physical, electronic, or other conduct based on an individual's protected status. Harassment violates this policy when:

1. Enduring the offensive conduct becomes a condition of continued employment or education,

OR

2. The conduct has the purpose or¹ effect of creating a work, education, or on-campus housing environment that a reasonable person would consider intimidating, hostile, or abusive.

AND

3. The conduct must be sufficiently severe or pervasive to alter the terms, conditions or privileges of an individual's employment, education, or on-campus housing.

1.21.1. Discrimination and Harassment can be behavior that:

- May be overt or implicit, and involve a threat or that any educational or employment decision may be affected by an individual's unwillingness to tolerate or accept the behavior.
- May or may not include the intent to harm.
- May be offensive conduct that becomes a condition of continued employment, education, or residence in on-campus housing.
- May adversely affect an individual's educational or employment opportunities by an individual's refusal to comply with or tolerate the prohibited activity.
- May not be legitimately related to the subject matter of a course.
- May be a pattern of behavior or, if sufficiently severe, a one-time event.
- May take the form of threats, assault, property damage, economic abuse, violence, threats of violence, or stalking.
- May include harassing or retaliatory behavior directed to a sexual or romantic partner, family member, friend, or pet of the complainant.
- May be committed by anyone, regardless of protected status, position, or authority.

1.21.2. Examples include, but are not limited to the following: offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance, academics or on-campus housing.

1.22 Incapacitation. A mental or physical state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

1.30.1. Incapacitation can occur because of mental deficiency or disease or because of the effect of any alcoholic substance, narcotic, drug (prescription or over-the-counter), or another substance, or when someone is asleep or unconscious.

¹ For classroom instructional purposes, the behavior must have both the purpose AND effect

- 1.23 Protected Status.** The University prohibits discrimination and harassment based on race, color, religion, age, national origin, ancestry, disability, sex, sexual orientation, gender identity, genetic information, veteran status, or marital or parental status.
- 1.24 Relationship Violence.** Refers collectively to domestic violence, dating violence, and stalking in this policy and procedure. Relationship violence may be a form of sexual harassment prohibited by this policy.
- 1.25 Respondent.** The individual against whom a complaint is filed for alleged violation(s) of this policy.
- 1.26 Responsible Employee.** For purposes of this policy, “Responsible Employees” are deans, directors, chairpersons, administrators, supervisors, faculty, Washburn Institute of Technology Instructors, academic advisors, resident assistants, coaches, advisors to student groups, and any other individual meeting the definition under the implementing regulations for Title IX. Any University employee who accompanies students off-campus on a University-sponsored trip is considered a Responsible Employee. Responsible Employee includes anyone designated as a Campus Security Authority under the Clery Act, identified as such in Washburn University Campus Security Report (<http://www.washburn.edu/securityreport>). Employees who have a legally recognized confidential relationship with the complainant, (professional counseling services provider, for example) do not constitute Responsible Employees.
- 1.27 Retaliation** Any attempted or completed adverse action taken against someone because he/she filed a complaint under this Policy, participated in the resolution of a complaint under this Policy, or opposed policies or practices he/she reasonably believed are discriminatory under this Policy.
- 1.27.1.** This includes action taken against a witness (eg. Bystander) who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct.
- 1.27.2.** Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual’s complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy.
- 1.27.2.1.** If the retaliatory behavior is taken by a third-party, acting for either to the Complainant or Respondent, against another person who is complaining or participating in this process, then the party for whom they are acting shall be deemed responsible for the retaliatory behavior by that third-person.
- 1.28 Sexual harassment.** Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
- 1a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or education; or
 - 1b. Submission to or rejection of such conduct by an individual is used as the basis for employment or education decisions affecting such individual;

OR

2. The conduct has the purpose or¹ effect of:
 - a. Unreasonably interfering with an individual's work, education, or on-campus housing; or
 - b. Creating an intimidating, hostile, or offensive work, educational, or on-campus housing environment;

AND

3. The conduct must be sufficiently severe or pervasive to alter the terms, conditions or privileges of an individual's employment, education, or on-campus housing.

1.28.1. Examples include but are not limited to the following: telling sexual or dirty jokes, performing sexual gestures, making sexual propositions, displaying sexually explicit photos, spreading sexual rumors, touching of a sexual nature, sexual coercion, and sex-based cyber harassment.

1.28.2. Section 703 of Title VII of the Civil Rights Act of 1964 defines harassment on the basis of sex in the workplace.

1.28.3. Sexual harassment of students and employees at Washburn University is a violation of Title IX of the Education Amendments of 1972, which prohibits sex discrimination in education.

1.29 Sexual Violence. Physical sexual acts perpetrated against an individual's will or where the individual is incapable of giving consent due to the victim's use of drugs or alcohol or an intellectual or other disability. Examples include, but are not limited to, rape, sexual assault, sexual battery and sexual coercion.

1.29.1. Acts of sexual violence are a form of sexual harassment prohibited by this policy.

1.30 Stalking. A course of conduct directed at a specific person that would cause a reasonable person to either 1) fear for his/her safety or the safety of others or 2) to suffer substantial emotional distress.

1.30.1. This definition is used for these policy purposes and is also considered a crime for Clery reporting purposes.

1.30.2. Kansas Statutes defines the crime of stalking more broadly, so certain behavior may be a crime, but not specifically a violation of this policy, and will be investigated as such by law enforcement. See K.S.A. 21-5427

1.31 University Program or Activity. Includes but is not limited to: University housing, study abroad programs, university sponsored organizations, athletics, research, extracurricular, co-curricular activities, occupational training or other programs and activities sponsored by the University or occurring on University premises.

1.32 Unwelcome. Conduct is considered "unwelcome" if the individual did not consent to the conduct and considered the conduct to be undesirable or offensive.

1.33 Work Environment. Includes but is not limited to: hiring, promotion, job assignments, training opportunities, etc.

2. Complainant Resources and Reporting

2.1. Interim and Protective Measures. The University will provide individuals who are possible victims of relationship violence with options and assistance in maintaining safety and eliminating the hostile environment. Complainants should contact the EOD/Title IX Coordinator or University Police to request assistance. The EOD/Title IX Coordinator will meet with a Complainant to determine which measures are appropriate in each case and work with University personnel to provide assistance. Certain measures may only be available if a complaint is filed.

2.1.1. Possible interim and protective measures may include, but are not limited to, the following:

- Changes to campus housing, class or work schedules
- Rescheduling of class or work assignments and deadlines
- Transportation assistance, including police escorts to car
- Issuance of a campus “No Contact” or “Notice to Leave” order
- Obtaining civil Protection for Abuse or Stalking orders in Shawnee County or similar lawful orders issued by another court
- University imposed suspension or administrative leave
- Review of academic or behavioral issues
- Student financial aid services
- On-campus counseling and medical services
- Off-campus victim advocacy, mental health, medical services and counseling service
- Title IX resources
- Where to find legal assistance, visa and immigration assistance on and off-campus

2.1.2. All measures may be provided during and after an investigation has concluded.

2.1.3. Reasonable and appropriate interim and protective measures designed to eliminate the reported hostile environment and protect the campus and parties involved may be imposed regardless of whether a formal investigation and/or disciplinary action is sought by the Complainant or independently pursued by the University.

2.1.4. On-campus counseling and medical services are also available to Respondents and witnesses.

2.2. Preserving Evidence. University Police can assist individuals with preserving evidence. [website coming]

2.3. Confidential Resources. If an individual wishes to discuss a specific incident confidentially without filing a complaint, he or she should contact these areas that provide free services:

- University Counseling Services (on-campus)
- Student Health Services (on-campus)
- Center for Safety and Empowerment (YWCA) (off-campus)

The University can assist individuals with finding other confidential resources upon request and may designate further confidential resources as appropriate.

Reporting Complaints.

2.4. Filing Options:

2.4.1. To file a complaint with the Equal Opportunity Director/Title IX Coordinator and initiate a **University (non-criminal) investigation**:

- Call: 785-670-1509
- Email: eodirector@washburn.edu
- In person: Morgan Hall Room 200 K
- www.washburn.edu/equal-opportunity

2.4.1.1. Any employee who becomes aware of any type of harassment should report the matter to the Employee's supervisor and/or the EOD/Title IX Coordinator

2.4.1.2. You can also notify these individuals with sexual violence complaints; they will forward complaints to the EOD/Title IX Coordinator :

- Associate Vice President for Student Life: 670-2100
- Associate Dean for Student Affairs (School of Law): 670-1162
- Associate Dean for Student Services (WIT): 273-7140
- Human Resources Director: 670-1538

2.4.2. To report an incident to the police and initiate a **criminal investigation**, contact Washburn University Police Department:

- Call: 785-670-1153
- Email: police@washburn.edu
- In person: Morgan Hall Room 156

2.4.3. CALL 911 IN AN EMERGENCY!

2.4.4. To file a complaint **outside of the University**, contact the following agencies:

- Office of Civil Rights in the Department of Education (students):
<http://www.hhs.gov/ocr/civilrights/complaints/index.html>
- Equal Employment Opportunity Commission (employees):
www.eeoc.gov/employees/howtofile.cfm
- Kansas Human Rights Commission (any incident):
<http://www.khrc.net/complaint.html>

2.4.5. A Complainant may file a complaint with the University and police concurrently or may choose to file one or the other.

2.5. Responsible Employees, as defined above in 1.26, are required to report an incident of sexual violence or relationship violence to the EOD/Title IX Coordinator, by any method listed above in 2.4.1., by the end of the next business day. Responsible Employees are

only required to report the name of the Complainant, but may report more information at their discretion.

- The EOD/Title IX Coordinator will then contact the Complainant to determine if the Complainant wishes to file a complaint and agrees to provide information to initiate an investigation. A Responsible Employee is not to investigate an incident prior to reporting.

2.5.1. Responsible Employees should also make the Complainant or third-party aware of campus resources and options for assistance found in Section 2 above, including confidential resources.

- **Call 911 in an emergency**, if a crime or other emergency is in progress, or if there is an imminent or a continuing threat of harm to persons or property.
- Incidents of relationship violence are presumed to pose a “threat” for purposes of reporting an incident, so call the police (911 or x1153) immediately upon report of such an incident. After calling the police, report the incident to the Equal Opportunity Director/Title IX Coordinator as defined above.

2.6 Confidentiality of Complaints and Reports. Parties in these processes, including the Complainant, Respondent, and witnesses, have privacy rights and reasonable expectations of confidentiality in the investigation of matters subject to this procedure. The EOD/Title IX Coordinator will maintain confidential, to the extent possible, the complaint, report, witness statements, and any other information provided by the Complainant, Respondent, or witnesses, and will disclose this information only to the following individuals:

- Complainant, Respondent, or witnesses, as necessary to give fair notice of the allegations and to conduct the investigation;
- Law enforcement consistent with state and federal law;
- Other University officials as necessary for coordinating interim measures or for health, welfare, and safety reasons; and
- Government agencies who review the University’s compliance with federal law.

2.6.1. The investigation report and any written decision from the EOD/Title IX Coordinator will be disclosed only to the Complainant, Respondent, Conduct Code Officer, and University officials as necessary to prepare for subsequent proceedings (e.g., University President and University Legal Counsel).

2.6.2. Information about complaints and reports, absent personally identifiable information, may be reported to University officials, including the University Police, and external entities for statistical and analysis purposes pursuant to federal and state law and University policy (e.g. The Clery Act).

2.6.3. Complainant request confidentiality or no investigation be done. If a complainant request his or her name not be revealed to the accused or that the University not investigate, the University’s ability to fully respond will be limited.

2.6.3.1. If such a request is made, the EOD/Title IX Coordinator will evaluate whether the request can be honored while still providing a safe and nondiscriminatory environment for the complainant and members of the campus community (all students and employees). The EOD/Title IX Coordinator will make the decision whether to conduct an investigation or take other action, and may confidentially consult with other University officials to assist in making such decision.

2.6.3.2. The EOD/Title IX Coordinator will investigate if he/she determines that the allegations, if true, would violate this policy. The Complainant will be informed of this decision.

2.6.3.3. If the University can honor the request for complainant confidentiality, it will still take reasonable steps to respond by offering support, increased security, education programs, and other appropriate measures.

2.7. Deadline for filing Complaints. Complaints should be filed with the EOD/Title IX Coordinator as directed above in Section 2.4.1.

2.7.1. Complaints of discrimination, other than sexual harassment, filed more than 180 days after the last incident may not be investigated. Upon receipt of such complaint, the EOD will determine whether to investigate the complaint considering these factors:

- Availability of evidence
- Alleged Respondent is a WU employee or student
- Alleged Respondent has continuing contacts with the Washburn University community, i.e. alumnus, vendor.

2.7.2. Complaints of sexual harassment can be filed at any time, there is no filing deadline. Members of the University community are encouraged to submit complaints of Sexual Harassment as soon as possible, preferably within six months of the incident or event that is the subject of the complaint. Delay in reporting an incident of Sexual Harassment may make it more difficult to secure evidence and witnesses to the incident, making it more difficult for the University to address the complaint. Delay in bringing a complaint also limits the University's ability to stop recurrence of the harassment and take interim steps to ensure the safety and well-being of the victim, complainant, and the University community.

2.7.3. The complaint procedure does not require the complainant to confront the alleged respondent in any manner or for any reason prior to filing a complaint under this Policy.

2.7.3.1. However, the complainant may choose to inform that person the conduct is unwelcome, offensive, violates University policy, and must stop. There are two methods by which this may be done. An individual may:

- Personally inform an individual that conduct is unwelcome or offensive;
- or,

- Ask a supervisor or the EOD/Title IX Coordinator to notify the alleged harasser.

2.8 Amnesty for alcohol violations in sexual violence cases. Students who report incidents of sex-based discrimination, sexual harassment, or sexual violence will not be sanctioned for violations of University alcohol or drug use policies that occurred during an incident involving a violation of this policy (Equal Educational and Employment Opportunity).

2.9. Retaliation Prohibited. University policy prohibits Retaliation, as defined in section 1.27 against a complainant and all persons cooperating in the investigation of an allegation of Discrimination and/or Harassment.

2.9.1 Retaliation should be reported to the EOD/Title IX Coordinator, and is considered an independent allegation that may lead to additional interim measures or disciplinary action.

3. Complaint Procedures.

3.1 Role of EOD/Title IX Coordinator in Complaint Process. The EOD/Title IX Coordinator is charged with coordinating the University's compliance with federal civil rights laws and is available for questions about the laws or this policy and procedure. The EOD/Title IX Coordinator is an impartial fact finder and is not an advocate for either the Complainant or the Respondent. The EOD/Title IX Coordinator will explain the rights and resources to both parties, then request their consent before beginning an investigation.

3.1.1. The EOD/Title IX Coordinator will explain to both parties:

- The list of protected groups
- All relevant definitions, including discrimination, harassment, sexual harassment, and sexual violence
- Confidentiality provisions and expectations
- Prohibition of Retaliation
- Complaint and fair and impartial Investigation Procedure
- Rights of both parties during the Procedure
- Appeal rights of both parties
- University Resources and other Options for Assistance (Section 2).
- The individual who will determine sanctions if a policy violation is found

3.1.2. No Complaint Filed. The EOD/Title IX Coordinator may become aware of an incident of alleged discrimination/harassment even though not reported by the alleged victim. The EOD/Title IX Coordinator will conduct an investigation into alleged incidents of discrimination/harassment and take appropriate measures. This is true even if the alleged victim does not report the matter.

3.2. Initial Evaluation. The EOD/Title IX Coordinator will meet with the complainant and gather sufficient information to determine how to process the complaint.

3.2.1. Option One: The alleged conduct, if true, would violate this Policy and is a prohibited activity, then The EOD/Title IX Coordinator will begin the Complaint Procedure (Section 3.3. below).

3.2.1.1. Formation of Review Team. In certain cases, the EOD/Title IX Coordinator may determine that a Review Team should conduct the complaint procedure. The EOD/Title IX Coordinator will select an impartial individual from an annually trained pool of investigators and together those two will be a Review Team. The Review Team will conduct the fair, impartial and prompt investigation according to the Investigation Procedure found below in Section 3.3.

(Throughout the Complaint Procedure, the term EOD/Title IX Coordinator will mean the Review Team, if formed.)

3.2.2 Option Two: In cases of alleged sexual violence or relationship violence (dating violence, domestic violence, and stalking), the EOD/Title IX Coordinator will meet with the WU Police and Conduct Code Officer to determine if sexual violence is alleged.

3.2.2.1. Sexual Violence. If the complainant alleges sexual violence in a domestic violence, dating violence, or stalking situation that occurred in a romantic relationship, the EOD/Title IX Coordinator will investigate the complaint and follow the procedure explained below in Section 3.3.

3.2.2.2. NO sexual violence. If the complaint involves allegations of domestic violence, dating violence or stalking between roommates or strangers where there is no romantic relationship as defined by Kansas law, the Conduct Code Officer will investigate the complaint and follow appropriate disciplinary procedure. http://www.washburn.edu/current-students/services/Student_Conduct_Code.pdf

3.2.2.3. Coordination with WU Police. The EOD/ Title IX Coordinator or Conduct Code Officer will work with the Washburn University Police Department when situations also involve potential crimes. The WUPD may conduct their own criminal investigation and it is possible that the EOD/ Title IX Coordinator or Conduct Code Officer may briefly and reasonably delay their investigation to not hinder the criminal investigation. These parties will coordinate their investigations so as to not interfere with one another and may exchange written statements, conduct joint interviews or share evidence to minimize any burden on Complainant or witnesses and conduct the investigations in a timely manner.

3.2.3 Option Three: If the alleged conduct, even if true, would not violate this Policy, then the EOD/Title IX Coordinator will notify the Complainant in writing that the complaint does not warrant further review under this Policy. The EOD/Title IX

Coordinator will also refer the Complainant to the appropriate University office and assist, if appropriate, in finding other on and off-campus resources.

3.2.4. As used in this procedure, the term “sexual harassment” encompasses all forms of sexual violence and relationship violence, as defined above in Sections 1.29 and 1.24.

3.3 Investigation Procedure. Upon determination under Section 3.2.1 or 3.2.2 above that an investigation should occur, the EOD/ Title IX Coordinator will normally begin an investigation of the Complaint within 10 business days of receipt of the complaint (the order of the procedure may vary if needed to conduct a thorough and impartial investigation):

3.3.1. Step One: Interview the Complainant and explain the EOD/Title IX Coordinator’s (or Review Team) role, the process, rights of the parties and other information listed above in 3.1.1. Obtain the Complainant’s consent to begin the investigation.

3.3.2. Step Two: Communicate with the Respondent, advise him or her of the charge of discrimination, harassment, or retaliation, and request a response. The Respondent will have five business days to respond orally or within writing. The EOD/Title IX Coordinator will explain EOD/Title IX Coordinator’s role, the process, rights of both parties and other information listed above in 3.1.1. At the end of five business days, the review will proceed with or without a response. After the Respondent submits a response, the EOD/Title IX Coordinator may interview the Respondent and allow him or her the opportunity to explain what occurred from the Respondent’s perspective.

3.3.3. Step Three: Investigate the allegations by gathering relevant documents or evidence. (For example, such evidence may include emails, texts, performance reviews, etc.).

3.3.4. Step Four: Interview witnesses with first-hand knowledge of allegations.

3.3.5. Step Five: Take any other steps deemed appropriate and necessary by the EOD/Title IX Coordinator. This may include additional interviews with the parties or witnesses, visits to a relevant location, review of resources, or any other acts needed to conduct a thorough and impartial investigation.

3.3.6. Step Six: After the EOD/Title IX Coordinator has evaluated all relevant, available information, he/she shall determine, whether the policy was violated by a preponderance of the evidence,

3.3.6.1. If the determination is that no violation has occurred, the EOD/Title IX Coordinator, will issue a written report stating the finding and explaining the rationale. The EOD/ Title IX Coordinator will provide a copy of the report to both the Complainant and the Respondent. The investigation will then be considered completed.

3.3.6.2. If the determination is that a violation has occurred, then the investigation moves on to Step Seven below.

3.3.7. Step Seven: Upon determining that the policy was violated, the EOD/ Title IX Coordinator shall contact the appropriate Conduct Code Officer pursuant to Section 3.5 below.

3.3.7.1 After conferring with the EOD/Title IX Coordinator, the Conduct Code Officer, within three business days, shall advise the EOD/Title IX Coordinator, in writing, what sanction will be imposed as a result of the policy violation.

3.3.8 Step Eight: Upon receipt of the sanction determination by the Conduct Code Officer, the EOD/Title IX Coordinator will issue a written report stating the finding, explaining the rationale and stating the sanction to be imposed. The description of the sanction contained in the written report is subject to the limitations set out in Section 3.6 below. The investigation will then be considered complete.

3.3.8.1. The EOD/Title IX Coordinator will simultaneously notify both parties by email that the written report is complete and will be placed in the mail using the address on file.

3.3.8.2. If relevant to enforce sanctions, a coach or advisor may be informed to the extent necessary to make an appropriate decision regarding a respondent's participation in an activity.

3.3.9 Content of the written report. The written report provided to both parties shall contain the following information:

- The allegations investigated.
- The information received and the source(s) of the information.
- Analysis of the information received.
- The determination as to whether or not the policy was violated.
- The Sanctions to be imposed, if appropriate.
- The parties rights to appeal.
- Statement of confidentiality relating to the written report and the investigation.
- Warning against Retaliation.

3.4. Complaint and Investigation Procedure Protocols.

3.4.1. Time Frames. The EOD/Title IX Coordinator will conduct the investigation in a prompt, thorough and impartial manner. An investigation will normally take 60 days from receipt of complaint to issuance of final report, but the EOD/ Title IX Coordinator has discretion to make reasonable adjustments to the deadlines as necessary to maintain the integrity of the investigation and to the overall safety of the campus community. Some possible reasons for delay are these examples: availability of witnesses; University breaks; and complexity of the complaint.

3.4.1.1. The EOD/Title IX Coordinator will make reasonable efforts to notify the Complainant and Respondent of the timing and progress of various stages of the investigation, as appropriate.

3.4.1.2. If timeframes are extended, both parties will be notified of the revised dates.

3.4.2. Rights and Roles of Parties: Both the Complainant and the Respondent have the following rights during the investigation:

- A notice of meeting times when parties can be present.
- An opportunity to submit the names of relevant witnesses or other evidence to the EOD/Title IX Coordinator.
 - No evidence of the Complainant's prior sexual conduct with anyone other than the Respondent shall be considered by the EOD/Title IX Coordinator.
 - Evidence of a prior consensual dating or sexual relationship between the parties does not imply consent or prevent a finding of a policy violation.
- The option to bring an advisor (maximum two per party) to any meeting during any stage of the investigation or sanctioning.
 - The advisor is to serve as a support person for the individual. They cannot speak on behalf of the individual, but may confer privately or in writing with the individual during a meeting.
 - If the advisor is an attorney, the party must notify the EOD/ Title IX Coordinator at least three business days in advance of the meeting so that Washburn's University Counsel can attend.
- The right to view information used in the investigation and sanctions, in accordance with FERPA

3.4.3. Standard of Review. The EOD/ Title IX Coordinator determines whether there is a preponderance of the evidence to believe that an individual engaged in a Policy Violation. This means that it is more likely than not that a policy violation occurred.

3.4.4. Complainant or Respondent withdraws. If either party chooses to withdraw at any stage of the investigation, the EOD/ Title IX Coordinator will continue the investigation to the best of his or her ability. The University is responsible for maintaining a safe campus environment for all individuals, so it will take steps to ensure the safety of all, the complained-of behavior does not continue, and individuals are supported with resources. See also Section 2.6.3.

3.4.4.1 The fact that any party chooses to withdraw at any stage of the investigation will not be used to determine credibility of information received or if the policy has been violated. However, withdrawal will impact the EOD/Title IX Coordinator's ability to have all relevant information when determining if the Policy was violated.

3.4.5. Conflict of Interest. The names of the EOD/Title IX Coordinator and the individuals who will serve on the Review Team for a particular matter will be readily accessible. In the rare situation in which an actual or perceived conflict of interest arises between the EOD/Title IX Coordinator or Review Team member and any party to the complaint, that conflict will be disclosed to both parties.

3.4.5.1. When a conflict becomes known, the complaint will be submitted to University Counsel to resolve the conflict of interest. If

University Counsel determines there is no conflict of interest, the EOD/Title IX Coordinator will resume the investigation. If University Counsel determines a conflict of interest exists, the EOD/Title IX Coordinator or Review Team member will be asked to recuse him or herself.

3.4.5.1.1. The University Counsel's decision is final.

3.4.5.2. If the EOD/Title IX Coordinator is unable or unavailable to conduct an investigation, the President will assign another trained impartial investigator to address a complaint.

3.4.6. Training. All University officials who are involved in the discrimination complaint procedures, including the EOD/Title IX Coordinator, Review Team, Washburn University Police Department, and Conduct Code Officers, will have adequate training. Training will address, but is not limited to, recognizing and appropriately responding to allegations of discrimination, harassment, including hostile environment harassment, sexual violence, relationship violence, and retaliation, conducting investigations, protecting confidentiality, and recognizing the link between alcohol and drug use and sexual violence and sexual harassment.

Sanctions.

3.5 Collaboration with Conduct Code Officer. If the EOD/Title IX Coordinator determines the Respondent violated the policy, the EOD/Title IX Coordinator will meet with the Conduct Code Officer responsible for issuing sanctions or other disciplinary action in his or her respective area. Together, they will discuss the appropriate sanctions for the policy violation, considering the severity of the violation, the individual's past conduct record, and effectiveness of prior sanctions given for similar violations.

3.6. Possible sanctions: Appropriate sanctions or disciplinary actions that most effectively prevent recurrence of any harassment and correct its discriminatory effects will be issued. If the EOD/Title IX Coordinator determines that a hostile environment has occurred based on sexual harassment, the University will take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. The range of sanction for each group are found at the websites listed:

- Staff: <http://www.washburn.edu/faculty-staff/human-resources/wuprpm/employee-and-labor-relations.html#4>
- Faculty: <http://www.washburn.edu/faculty-staff/faculty-resources/faculty-handbook/index.html>
- Bargaining Unit members, see the Memorandum of Agreement
- Students: http://www.washburn.edu/current-students/services/Student_Conduct_Code.pdf
- Law School students: <http://www.washburnlaw.edu/policies/honorcode.html#pt2>
- Washburn Institute of Technology students: <http://www.washburntech.edu/future-students/2014-2015%20handbook.pdf>

- 3.7. Protective Measures.** The EOD/Title IX Coordinator will assist the Complainant with any assistance detailed above in Section 2, even after the resolution of the complaint.
- 3.8. Notification to Parties.** After the sanctions have been determined, both parties will be notified in writing. The Respondent will be informed of all sanctions.
- 3.8.1.** The Complainant will **only** be notified of Sanctions that relate to her/him.
- 3.8.2.** Both parties will be notified of their right to appeal, the possible bases for appeal, and the appeal procedure, as found in Section 4, below.

4. Appeal Procedures

- 4.1. Appeal Request.** Both the Complainant and Respondent have appeal rights under this Policy. All appeals must be in writing and must be submitted to the EOD/Title IX Coordinator within twelve business days from the date the final decision was issued. Failure to file such a request within the required time period will constitute and be construed as full acceptance by all parties of the findings.
- 4.1.1. Date of Final Decision.** The date of final decision is the date of the written report by the EOD/Title IX Coordinator.
- 4.2. Basis for Appeal.** Either party may appeal the Final Decision on any of these bases:
- 4.2.1 New evidence** has been discovered that could have a direct bearing on the determination of a policy violation.
- Such evidence must not have been known or been available to the appealing party before the date of the Final Decision.
 - The Appeal Request must include a description of the new evidence and how the party requesting the appeal believes the newly discovered evidence would change the decision.
- 4.2.2 The Complaint Procedure was not appropriately followed** for one of these reasons:
- 1) The investigation was conducted inappropriately;
 - 2) The investigation did not follow the process as set out in this policy; or
 - 3) The EOD/Title IX Coordinator's decisions on evaluation of evidence were arbitrary and capricious; **and** this failure to follow appropriate procedure led to an incorrect finding.
- 4.2.3 The Sanction is inappropriate for the policy violation.**
- 4.3 Appeal Panel and Notification to parties.** The committee that will review appeal requests is the Vice President of Academic Affairs, the Vice President of Administration and Treasurer, and the Vice President for Student Life.
- 4.3.1** Upon receipt of the Appeal Request, the EOD/Title IX Coordinator will notify the other party involved in the complaint of the appeal within two days by sending them the written Appeal Request.

- 4.3.2 The other party has 10 business days to submit a written response to the EOD/Title IX Coordinator.
- 4.3.3. The EOD/Title IX Coordinator will provide all members of the Appeal Panel with the EOD/Title IX Coordinator's final report, including any sanctions determined by the Conduct Code Officer, if appropriate, the written Appeal Request, and the response to Appeal Request, if any.
- 4.3.4. The EOD/Title IX Coordinator will notify the parties of expected timeframe for the Appeal Panel's decision and update them if it changes.
- 4.3.5 If one of the committee members was involved with the earlier sanction of an individual, the President will appoint a replacement on the committee.
- 4.4. **Review of Appeal Request.** The Appeal Panel will review all submitted documents and determine whether any of the bases for appeal are valid. The Appeal Panel will accept the EOD/Title IX Coordinator's decision unless they are definitely and firmly convinced that a mistake has been made. There are four possible outcomes from the review:
 - 4.4.1. **New Evidence exists.** The Appeal Panel reviewed the provided information and are convinced that the new evidence 1) was not known or available to the appealing party prior to the date of the Final Decision and 2) that if the EOD/Title IX Coordinator considered such evidence, there is a likelihood the result would have been different.
 - 4.4.1.1. The Appeal Panel shall direct the EOD/Title IX Coordinator to re-open the investigation, consider the new evidence, and prepare a new Final Report.
 - 4.4.1.2. This decision to remand the investigation is **not** subject to appeal.
 - 4.4.1.3. The new Final Report can be newly appealed as any other Final Report.
 - 4.4.2. **Complaint Procedure not appropriately followed.** The Appeal Panel reviewed the provided information and determined that the processes used in the investigation was not appropriate for one of these reasons: 1) it failed to follow the policy; or 2) the EOD/Title IX Coordinator was arbitrary and capricious in his/her decisions.
 - 4.4.2.1. The Appeal Panel will direct the EOD/Title IX Coordinator to resume the investigation at the point where the first error occurred and continue re-doing the investigation according to the procedure. They will provide a specific written basis for their determination to the EOD/Title IX Coordinator.
 - 4.4.3 **Sanction Inappropriate.** The Appeal Panel will only hear appeals of sanctions for Respondents who are students. If the Respondent is an employee, the Appeal Panel will only address the appeal of sanctions if there is no other applicable process, by policy or contract, in place for such appeals, i.e. Faculty Handbook, MOU, etc.

4.4.3.1 The Appeal Panel reviewed the provided information and determined the sanction was inappropriate for the policy violation. The Appeal Panel shall then determine and impose the new appropriate sanction(s). Sanctions must be imposed within the appropriate range of available sanctions that discourage future acts of discrimination or harassment.

4.4.3.2 The determination to impose new sanctions by the Appeal Panel is final and cannot be appealed; the case will be closed.

4.4.4. Approve the EOD/Title IX Coordinator's Final Report. If the Appeal Panel finds no new evidence or that the new evidence would not change the result or that the Complaint Procedure was appropriately followed, no matters will be returned to the EOD/Title IX Coordinator to re-open an investigation and the case will be closed.

4.4.4.1. If the Appeal Panel finds that the Sanctions are appropriate, they will uphold the EOD/Title IX Coordinator and Conduct Code Officer's decision and the case will be closed.

4.5. Appeal Panel's Decision

4.5.1. The Appeal Panel will issue a written decision in a timely fashion, not more than 20 business days after receipt of the Appeal Request.

4.5.2. Copies of the decision will be given to the Complainant, Respondent, EOD/Title IX Coordinator, and University Counsel.

4.5.3. Matters directed back to the EOD/Title IX Coordinator. The EOD/Title IX Coordinator shall complete the re-opened investigation normally within 15, but no more than 30, business days from receipt of the Appeal Panel's decision.

4.5.3.1 If the case is not directed back to the EOD/Title IX Coordinator to re-open an investigation, the case is not subject to any further review by the University.

4.5.4. The decision of the Appeal Panel is final. There is no appeal of any decision made by the Appeal Panel.

4.5.5. No decision of the Appeal Panel will change any University policy or procedure.