

1. NON-DISCRIMINATION

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 2.

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 also 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: codirector@washburn.edu. (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 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.

1.4.4. 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.

1.4.5. 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.

- 1.5. Complaints.** Complaints of discrimination or harassment are to be made to the EOD/Title IX Coordinator. See Section A.2. of Regulations and Procedures for the process and more information.
- 1.6. 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).
 - 1.6.1.** 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.
 - 1.6.2.** All persons covered under this policy, except for Complainant and Respondent as set out in Regulations Section 3.4.4, 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 Regulations Section 2 for more detailed confidentiality provisions and Section 2.11 below for retaliation provisions.
- 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 Section 3.
 - 1.7.1.** 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 Regulation 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 Policy Section 2.11 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 Establishment of Regulations. The Administration shall develop regulations and procedures consistent with this policy.

2. DEFINITIONS

2.1 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.

2.1.1. 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.

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 Consent may be withdrawn at any time. Once consent is withdrawn, the sexual contact must cease immediately.

2.1.3. Consent is defined only for purposes of this policy. Kansas law does not define consent and may use a different standard in criminal cases.

2.2. 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.

2.2.1. 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.

2.2.2. 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.

- 2.3. 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.)
- 2.3.1.** Sex Discrimination includes sexual harassment and sexual violence.
- 2.4. Domestic Violence.** Felony or misdemeanor crimes of violence committed by a current or former family or household member.
- 2.4.1.** 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.
- 2.4.2.** 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
- 2.5 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 For classroom instructional purposes, the behavior must have both the purpose AND effect

2.5.1. 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.

2.5.2. 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.

2.6. 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.

2.7 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.

2.8. 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.

2.8.1. This includes action taken against a witness (e.g. Bystander) who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct.

2.8.2. 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.

2.8.3. 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.

2.9 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 or² 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.

2.9.1. 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.

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

² For classroom instructional purposes, the behavior must have both the purpose AND effect

- 2.9.3.** 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.
- 2.10 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.
- 2.10.1.** Acts of sexual violence are a form of sexual harassment prohibited by this policy.
- 2.11 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.
- 2.11.1.** This definition is used for these policy purposes and is also considered a crime for Clery reporting purposes.
- 2.11.2.** 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