

## Table of Contents

|  |           |
|--|-----------|
| <b>1. Non-Discrimination.....</b>  | <b>2</b>  |
| <b>2. Complainant Resources and Reporting.....</b>                             | <b>9</b>  |
| <b>3. Complaint Procedures.....</b>  | <b>14</b> |
| <b>4. Appeal Procedures.....</b>   | <b>20</b> |
| <b>5. Conflict of Interest.....</b>  | <b>23</b> |
| <b>6. Drug Free Work Place.....</b>  | <b>26</b> |
| <b>8. Alcoholic Liquor and Cereal Malt Beverage.....</b>                       | <b>30</b> |
| <b>9. Internal Audits.....</b>   | <b>32</b> |
| <b>10. Sensitive Information Protection and Identity Theft Prevention.....</b> | <b>32</b> |
| <b>11. Reporting Wrongful Conduct and Protection from Retaliation.....</b>     | <b>35</b> |
| <b>12. Tuberculosis Control and Prevention.....</b>                            | <b>36</b> |
| <b>13. Social Media.....</b>   | <b>39</b> |
| <b>14. Kansas Open Records Act.....</b>  | <b>42</b> |
| <b>15. Religious Accommodations.....</b>                                       | <b>43</b> |
| <b>16. Title IX (Sexual Harassment and Sexual Violence).....</b>               | <b>46</b> |

## **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 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](mailto: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.

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- 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.
- 1.7.1** 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 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

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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.

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- 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.

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**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 or<sup>1</sup> 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.

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<sup>1</sup> For classroom instructional purposes, the behavior must have both the purpose AND effect

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- 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).

**1.22.1** 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.

**1.23 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

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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 or<sup>1</sup> 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.

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- 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

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- 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.

**2.4 Reporting Complaints. 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](mailto:eodirector@washburn.edu)
- In person: Morgan Hall Room 200 K
- [www.washburn.edu/equal-opportunity](http://www.washburn.edu/equal-opportunity)

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**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](mailto: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](http://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.

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- **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.

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- 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

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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.

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**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](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

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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,

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**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

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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

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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

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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](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.

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- 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.



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#### **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.

#### **5. Conflict of Interest.**

**5.1 Purpose.** The purpose of these regulations and procedures is to:

- Provide examples of conduct which is deemed to constitute actual or apparent conflict of interest;
- Describe the process by which disclosure of actual, potential or apparent conflicts of interests, are to be made by University Employees or representatives; and,
- Describe enforcement of the conflict of interest policy.

**5.2 Definition.** For the purpose of these regulations and procedures the following definition applies.

**5.2.1 "Conflict of interest"** means the existence of an Employee's financial or personal considerations which may, or may appear to, impair or compromise the performance of the Employee's duties as a University Employee for or on behalf of the University.

**5.3 Types of Conflict.** A conflict of interest, or apparent conflict of interest, exists when an Employee or person acting for or on behalf of the University:

- Seeks personal gain through his/her employment at the University;
- Engages in non-university employment or consulting activity for himself/herself or for another which impairs:
  - His/her ability to fulfill her/his obligations to the University as an Employee; or,

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- The Employee's judgment in the performance of University duties and responsibilities.

**5.4 Personal Gain.** The following are examples of conduct which present a conflict of interest when personal gain accrues to the Employee or a member of his/her family or others with whom he/she is associated.

**5.4.1 A person uses, or attempts to use:**

- His/her position with the University to achieve a material and/or financial benefit for himself/herself or others;
- University property, resources or services, including but not limited to, University offices, office supplies, telephone, equipment, computing resources, for personal and private purposes to achieve a material or financial benefit for himself/herself or others;
- University Employees, Students, contractors, or volunteers to achieve a material or financial benefit for himself/herself or others; and,
- Any confidential information acquired in connection with University related activities or University employment to achieve material or financial benefit for himself/herself or others, or for other unauthorized purposes.

**5.4.2 A person directly or indirectly solicits, receives or accepts anything** of more than nominal value from any person or organization seeking to do business with or have an association with the University. Exceptions are:

- Registration for an event at which the Employee is making a presentation or providing a service, as an Employee of the University, to the event sponsor;
- Promotional items, such as coffee cups, pens, pencils, mouse pads, etc;
- Textbooks, software, and instructional materials to be reviewed by teaching faculty;
- An award, plaque, certificate, memento or similar item given in recognition of the Employee's charitable, civic, professional, personal private, public or political achievements;
- Food and/or beverage of nominal or reasonable amount given to or consumed by an Employee at a single meal or event; or,
- The President or his/her designee may grant additional exceptions, in writing, when he/she determines, upon the basis of the facts presented:
  - The benefit accruing to the individual is of nominal value; and,
  - The exception will not impair either the individual's or University's ability to conduct business ethically, fairly and impartially; or,
  - When the requested exception is a common and generally accepted practice in public higher education institutions.

**5.5 Other Employment and Activity.** The following are examples of non-University employment or activity, either with or without compensation, which impairs the ability

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of an individual to perform his/her obligations as an Employee or representative of the University.

**5.5.1 Employment or other activity which occurs at times during** which the Employee normally is to perform his/her obligations for the University.

**5.5.2 Employment, without the approval of the applicable** Major Academic Unit Dean and the VPAA, in a teaching capacity on a full-time or part-time basis with another higher education institution.

**5.5.3 Employment or activity individually or with another person** or entity providing goods or services which are in competition with goods and/or services provided by the University.

**5.6 University Disclaimer.** In all employment or activities outside of an Employee's University employment, each Employee functions in his or her individual capacity, without the support of the University, and is solely responsible for his/her acts.

**5.7 Disclosure—Creation of University Financial Obligations.** All persons recommending or involved in creating any financial obligation of the University, including but not limited to the purchase of goods or services, contracts obligating the University, and leases, shall disclose to their supervisor the nature of any relationship whatsoever they may have with any vendor, contractor or lessor. A financial obligation in which an Employee or representative of the University has an interest will only be entered into if:

- It is deemed to be in the best interests of the University; and,
- Such person's interest with the other party will not conflict substantially or materially with such person's discharge of his/her University responsibilities.

**5.8 Disclosure—Conflict with Duties.** All persons considering non-university employment or other activity which may create a conflict of interest have a duty to disclose any actual or potential conflict to their supervisor by submitting a written statement describing the nature of the potential conflict. Supervisors who become aware of such actual or potential conflict with the University by persons within their supervision have a duty to request such individuals provide such a written statement.

**5.9 Disclosure Advice.** Any person who is in doubt whether he/she is confronted with an actual or potential conflict of interest should seek the advice of his/her supervisor or the appointing authority for his/her position to determine if the interest could conflict impermissibly with the person's obligation to the University.

**5.10 Annual Disclosure.** All officers of the University or its Board of Regents, deans, directors and those persons identified by the President shall annually submit a completed "Annual Conflict of Interest Disclosure Statement" to the Vice President for Administration and Treasurer.

## **5.11 Enforcement.**

**5.11.1 The ultimate responsibility for the enforcement** of the policies and regulations on conflicts of interest is that of the President who may delegate authority for enforcement to other University officials.

**5.11.2 Violations of the policy or regulations, include,** but are not limited to:

- The failure to file timely disclosures;
- Filing incomplete, erroneous, or inaccurate disclosures; or,
- Failure to comply with prescribed procedures for managing or resolving conflicts or potential conflicts of interest.

**5.11.3 Violations shall subject the person to disciplinary sanctions** which may include, but are not limited to, suspension from or termination of employment.

**5.12 Examples.** Examples of situations in which a conflict of interest will be deemed to exist.

**5.12.1 The use of the Employee's or individual's official title of employment** or the University's name, or any of the University's component parts, including any of the University's graphics, in any situation other than in the conduct of official University business.

**5.12.2 The use of any University resource,** including but not limited to University stationery, the University's address, phone number, fax number or electronic mail address as a contact point for personal or private business use.

**5.12.3 The use of the University's name, its tax-exempt status** or its tax-exempt number to purchase goods or services for personal or private business use.

**5.12.4 The use of University resources in such a way as to interfere** with, or cause harm or damage to, another person, institution, or company within or outside the University community.

## **6. Drug Free Work Place.**

**6.1 Purpose.** To set forth regulations and procedures developed to ensure compliance with the Drug Free Workplace Act of 1988 and as amended thereafter.

**6.2 Definitions.** The following definitions apply to Drug Free Work Place.

**6.2.1 "Controlled Substance"** means a controlled substance identified in Schedules I through V of the Controlled Substance Act ( 21 U.S.C. 812 ). These include, but are not limited to:

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- Marijuana;
  - Amphetamines;
  - Heroin; and,
  - Cocaine or its derivatives.

**6.2.2 “Conviction”** means a finding of guilt, including a plea of nolo contendere, or the imposition of a sentence, or both, by any court having jurisdiction over violations of federal or state criminal drug statutes.

**6.2.3 “Criminal Drug Statute”** means any federal or state law prohibiting the unlawful manufacture, distribution, sale, dispensation, use, or possession of any controlled substance.

**6.2.4 “Workplace”** means property owned or in control of the University.

**6.3 Prohibition.** The University shall not tolerate substance abuse or use which imperils the health and well-being of its Students and Employees or threatens the University’s mission, therefore, the following are prohibited:

- The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the workplace or while the Employee is on duty, on official University business, or on standby duty; and,
- Reporting to work or performing work for the University while impaired by or under the influence of controlled substances or alcohol.

**6.4 Disciplinary Action.** An Employee will be disciplined when:

- Found to have violated the prohibition stated above; or,
- Convicted for violation of a criminal drug statute for a violation occurring in the workplace.

**6.4.1 An Employee’s participation in an approved drug abuse or rehabilitation program** will be considered in determining the disciplinary action to be taken. The participation may be voluntary or involuntary.

**6.5 Drug Free Awareness Program.** The Director of Human Resources shall establish and administer an ongoing drug free awareness program as required by law.

**6.5.1 The Director shall cause notice to be posted stating:**

- The University’s policy prohibiting the unlawful manufacture, dispensing, use or possession of controlled substances in the workplace;
- The dangers of the use and abuse of drugs in the workplace; and,
- That the Employees who violate the policy or who are convicted of a criminal drug statute for a violation in the workplace shall be subject to disciplinary action up to and including termination.

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**6.5.2 The Director shall prepare, and make available to all Area Heads,** a list of available drug counseling or rehabilitation programs in the Topeka/Shawnee County area.

## **6.6 Federal Grant Related Requirements.**

**6.6.1 Each Employee in an area participating in a federal grant activity** shall be provided a copy of the Drug-Free policy statement by the Principal Investigator.

**6.6.2 Each Employee in an area participating in a federal grant activity** shall be notified, in writing by the Employee's Area Head, that as a condition of employment in the federal grant activity each Employee will:

- Abide by the terms of the policy statement; and,
- Notify the Area Head of any of the Employee's criminal drug statute conviction for a violation occurring in the workplace no later than 5 calendar days after the conviction.

**6.6.3 The Employee's Area Head shall notify, or cause to be notified,** any contracting agency of an Employee's conviction within 10 days after receiving notice of the conviction.

## **7. Smoking and Tobacco Use.**

**7.1 Purpose.** To set forth the regulations and procedures for the implementation of the University's policies regarding smoking and tobacco use.

**7.1.1 Definition of Smoking and Tobacco Products** – Smoking and tobacco products include all forms of smoking and tobacco use, including but not limited to, cigarettes, cigars, pipe tobacco, electronic cigarettes, vapor-delivery devices, and chewing tobacco.

**7.2 Smoking and Tobacco Restrictions on Campus.** Smoking and tobacco use shall be restricted within the boundaries of any property owned or leased by Washburn University as described below:

**7.2.1 Designated Smoking and Tobacco Use Areas.** Specific areas within the bounds of the Washburn campus and Washburn Institute of Technology campus have been identified for smoking and tobacco use. Smoking and tobacco waste disposal containers shall be placed at designated areas and use must occur within 10 feet of waste disposal containers at designated areas. Smoking and tobacco use restrictions may vary for off-campus leased locations. Designated smoking and tobacco use areas are shown on the maps and list provided at [www.Washburn.edu/tobacco](http://www.Washburn.edu/tobacco).

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**7.2.2. University Owned or Leased Vehicles.** Smoking and tobacco use shall be prohibited in University owned or leased vehicles. This shall include, but not be limited to, passenger vehicles, trucks, vans, buses, golf carts, utility vehicles, and lawnmowers. This applies whether the vehicle is on or off campus.

**7.2.3. Private Vehicles.** Smoking and tobacco use is permitted inside privately owned vehicles.

**7.2.4. Disposing of Smoking and Tobacco Products.** All smoking and tobacco products and their residue shall be disposed of in an appropriate waste disposal container located at the designated use areas.

### **7.3 No Smoking or Tobacco Use Signs and Other Notifications.**

**7.3.1** Facilities Services shall place the international no smoking symbol sign at the entrance of each building and other locations where smoking and tobacco use is prohibited.

**7.3.2** The following Employees shall be responsible for advising the designated groups of the University's smoking and tobacco use regulations:

- Those who schedule use of University facilities shall be responsible for advising Non-University groups inquiring about use of University facilities;
- The Director of Human Resources or designee, or the VPAA or designee shall be responsible for advising prospective employees;
- The Director of Admissions or designee(s) shall be responsible for advising prospective students;
- The VPAT or designee shall be responsible for advising employees at the time of adoption of these regulations;
- The VPSL or designee shall be responsible for advising students at the time of adoption of these regulations; and,
- The employees who arrange for third parties to provide services on University owned or leased property shall be responsible for advising said parties.

**7.4 Responsibility for Enforcement.** The enforcement of these regulations shall be a shared responsibility by all members of the University community, faculty, staff, and students.

**7.4.1.** The following individuals shall be responsible for addressing complaints of violations in their respective areas:

- Supervisors of employees and areas of University business;

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- Those responsible for student conduct code enforcement;
  - Organizers or designee(s) of activities/events; and
  - The Director of University Police or designee(s)

**7.5 Complaints of Violation.** Any individual may make a complaint of a violation to those responsible for enforcement, listed above in 7.4.1.

**7.5.1.** University Police may be called to assist in situations of multiple violations or uncooperative individuals, or where there is a violation of law (e.g. a tobacco user under 18).

**7.6 Consequences.** Individuals may be subject to appropriate disciplinary action as an employee or as a student for violating the provisions of this University policy.

## **8. Alcoholic Liquor and Cereal Malt Beverage.**

**8.1 Purpose.** To set forth regulations and procedures governing the selling, serving, and consumption of alcoholic liquor and cereal malt beverages on University owned or controlled property.

**8.2 Prohibited.** Except as authorized by the Board herein, the possession and consumption of alcoholic liquor and cereal malt beverages is prohibited.

**8.3 Definitions.** The following definitions apply to these regulations and procedures.

**8.3.1 “Alcoholic Liquor”** means alcohol, spirits, wine, beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable or being consumed as a beverage by a human being, but shall not include, any cereal malt beverage.

**8.3.2 “Cereal Malt Beverage”** means any fermented, but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than 3.2% alcohol by weight.

**8.3.3 “Event”** means a prearranged function not advertised to the general public and limited in attendance to members of the sponsoring individual and the sponsor’s guests.

**8.3.4 “Guest”** means the spouse of the person sponsoring the event, individuals invited to attend such event by the sponsor, or, in the event an event is sponsored by an organization, invited personal friends of a member of the organization sponsoring such event.

**8.3.5 “Member”** means an individual belonging to a sponsoring organization.

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**8.3.6 “Sale”** means any transfer, exchange, or barter in any manner or by any means whatsoever for a consideration and includes all sales made by any individual, whether principal, proprietor, agent, servant or Employee.

**8.3.7 “Sponsoring Organization”** means a corporation, association or legal entity sponsoring an event.

## **8.4 Exceptions.**

**8.4.1 Alcoholic liquor and cereal malt beverages may be served and/or consumed:**

- At an event occurring in or on the non-classroom instruction areas or grounds adjacent to non-classroom instruction areas or other areas designated in these regulations;
- With approval of the President obtained at least 15 days in advance of the event date; and,
- When the alcoholic liquor/cereal malt beverage is furnished by the University’s dining services provider.

**8.4.2 For University approved tailgating during University home athletic game days,** the alcoholic liquor and/or cereal malt beverages may be provided by the tailgaters. Such beverages shall be in non-breakable containers for personal consumption of members of the tailgaters’ party only.

**8.5 Designated Areas.** Alcoholic liquor and cereal malt beverages may be served and/or consumed at an event only in or on the following designated areas:

- President's residence and adjacent grounds;
- International House;
- White Concert Hall foyer;
- Carole Chapel;
- Mulvane Art Museum and Mulvane Art Museum foyer;
- Lobby area adjacent to Libation Station and the lobby area adjacent to the administrative offices of the Law School building;
- Memorial Union meeting rooms and adjacent lobbies;
- Bradbury Thompson Alumni Center;
- Gray University Theatre foyer;
- Hospitality areas of the Bianchino Pavilion;
- McPherson Room in Petro Allied Health Center;
- Lee Arena in Petro Allied Health Center;
- Athletic Conference Room; and,
- All outdoor areas of the University's campus; provided, however, the sponsoring organization shall designate and identify, subject to approval by the President, a specified area within which the consumption of alcoholic liquor and cereal malt beverages shall be limited.

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**8.6 Serving Alcoholic Liquor and Cereal Malt Beverage.** The individual/sponsoring organization shall:

- Ensure that alcoholic liquor or cereal malt beverages shall be served in compliance with applicable state and local laws;
- Have appropriate procedures to limit serving and consumption of alcoholic liquor and cereal malt beverages to individuals 21 years of age or older; and,
- Have appropriate procedures for removal or disposal of alcoholic liquor and cereal malt beverages immediately following the sanctioned function.

**8.6.1 All alcoholic liquor and cereal malt beverage service must be provided by** the University's dining services provider except as provided in 8.4.2 above.

**8.6.2 All events with alcoholic liquor and cereal malt beverage service must** include the availability of non-alcoholic beverage(s).

**8.6.3 The individual/sponsoring organization shall ensure** individuals in attendance at an event shall not carry alcoholic liquor and/or cereal malt beverages outside the area in which they are being served.

**8.6.4 When alcoholic liquor and/or cereal malt beverages are being served,** except for tailgating activities as provided in 8.4.2, special signage is required. As a special service University Scheduling shall:

- Request the designated outdoor area be physically marked with a temporary enclosure and signage restricting the possession and consumption of alcoholic liquor or cereal malt beverage within the space so marked; and,
- Coordinate with the University's dining services provider to provide signage for use in buildings restricting the possession and consumption of alcoholic liquor and cereal malt beverage to the room(s) for which permission has been granted.

**8.6.5 If deemed to be in its best interest, the University or its provider shall,** without penalty:

- Refuse service of alcoholic beverages to an individual; or,
- Discontinue service of alcoholic beverages at a function.

**9. Internal Audits.** For the purpose of maintaining proper accounting and management controls and efficient systems and procedures, the VPAT or VPAT designee shall conduct internal audits when the VPAT determines an audit is appropriate.

**10. Sensitive Information Protection and Identity Theft Prevention.**

**10.1 Purpose.** To set forth regulations and procedures for the administration and use of sensitive information and personally identifiable information and the establishment

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of an identity theft prevention program consistent with Board policies and applicable laws and regulations.

**10.2 Definitions.** For the purpose of these regulations and procedures the following definitions apply.

**10.2.1 “Covered Account”** means the extension of credit by the University to an individual for the purchase of goods or services involving multiple payments or transactions.

**10.2.2 “Personally Identifiable Information”** means information in any format, electronic or printed, pertaining to an individual by which the identity of the individual may be obtained and includes, but is not limited to, Social Security Number, the University WIN number, date of birth, birth name.

**10.2.3 “Red Flag”** means an indicator of potential fraud or threat for identity theft, including but not limited to:

- Alerts, notifications, or warnings from a consumer reporting agency;
- Suspicious documents; and,
- Suspicious personally identifiable information.

**10.2.4 “Sensitive Information”** means information in any format, printed or electronic, relating to an individual concerning the individual including, but not limited to the individual’s personally identifiable information, academic performance, employment performance, credit transactions or history, credit card numbers, payroll information, or medical information.

### **10.3 Use of Sensitive Information.**

**10.3.1 When sensitive information is being used in printed format,** University contractors and Employees shall:

- Lock cabinets, drawers, or storage spaces containing such information when not in use;
- Lock storage rooms and record retention areas at the end of the workday and at times when the rooms or areas are unsupervised;
- Ensure documents containing personally identifiable information may not be viewed or accessed by a member of the public or other individual having no need to know such information; and, Discard documents, or copies of such documents, containing personally identifiable information, upon useful life of the document by placing in a locked shred bin or immediately shredding it using a mechanical cross cut shredding device.

**10.3.2 When sensitive information is used in electronic format,** University contractors and Employees shall:

- 
- Ensure such documents may not be viewed by members of the public or any individual having no need to know such information on computer monitors or other devices used to access and view such information;
  - Provide access to such information to persons having a legitimate need to know such information;
  - Store such information in a location requiring the use of a password to access it; and,
  - Include a confidentiality statement in any email transmitting such information to a University contractor or Employee;

#### **10.4. Identity Theft Prevention Program.**

**10.4.1 The Administration periodically shall review the University's business functions to determine** whether the University offers or maintains covered accounts.

**10.4.2 The Administration periodically shall conduct a risk assessment of its functions involving** covered accounts taking into consideration:

- The method of opening such accounts;
- The methods provided to access such accounts;
- Experience of incidents of identity theft;
- Methods of identity theft; and,
- Appropriate supervisory guidance.

**10.4.3 The Administration shall identify red flags which might evidence a potential instance of fraud or the risk** of identity theft with respect to covered accounts. Employees and individuals involved in transaction involving covered accounts shall be provided a list of such red flags. Such red flags may include, but are not limited to:

- Alerts, notification, or warnings from a consumer reporting agency including, but not limited to:
  - A fraud or active duty alert from a consumer reporting agency in response to a request for a consumer report;
  - Notice of a credit freeze from a consumer reporting agency; or,
  - Notice of address discrepancy from a consumer reporting agency.
- Suspicious documents, including, but not limited to, a document which:
  - Appears to have been altered or forged;
  - The description or photograph on such document is not consistent with the appearance of the individual presenting the document; or,
  - Information on the document is not consistent with other information concerning the individual in the possession of the University.

- 
- Suspicious personal identifiable information provided inconsistent when compared with external sources used by the University which may include, but is not limited to:
    - Non-matching addresses;
    - Social Security Number (SSN) has not been issued or is on the Social Security Administration's Death master File;
    - SSN provided matches an SSN furnished by another individual; and,
    - Personal identifiable information provided inconsistent with other such information furnished by the individual.

**10.4.4 When a red flag is detected, the contractor of Employee shall gather** all related documentation and present to the VPAT for investigation and determination of whether the activity is authentic or fraudulent.

**10.4.5 When a red flag activity is determined to be fraudulent,** the VPAT or designee(s) shall take action deemed appropriate to eliminate or minimize exposure to liability which may include, but is not limited to:

- Cancellation of transaction;
- Notification to, and cooperation with law enforcement personnel;
- Determination of liability; and,
- Notification to individual.

**10.4.6 The Administration will review and revise the Identity Theft Program periodically and/or as needed.**

**10.5 Staff training.** Staff training shall be conducted by the VPAT for all contractors, Employees, and individuals for whom it is reasonably foreseeable they may come into contact with covered accounts and/or personally identifiable information.

**11. Reporting Wrongful Conduct and Protection from Retaliation.** Washburn University is committed to providing an environment that allows individuals to make good faith disclosures of unlawful acts or violation of University policies, regulations and procedures, including financial irregularities, free from retaliation. Employment action or any other action that would have been taken regardless of disclosure of information are not prohibited. The report of wrongful conduct will be investigated and the rights of the Employees protected. Reports that are frivolous, vindictive, and without support or merit may result in disciplinary action.

**11.1 Reporting allegations.** Employees or Students who have knowledge of specific acts which they reasonably believe violate federal, state or local law or which violate the policies, regulations and procedures of Washburn University may report those acts to University Counsel: Morgan Hall, Room 208C, 785-670-1712, or the appropriate University official as shown below:

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**Sexual Harassment, Discrimination or other Equal Opportunity issues:**

Director, Equal Opportunity: Morgan Hall, Room 308A, 785-670-1509

**Environment, Health or Safety:**

Director, Safety Planning: Memorial Union, 785-670-1779

**Misuse of Funds or Financial Irregularities:**

Vice-President for Administration: Bradbury Thompson Alumni Center,  
Room 208, 785-670-1634; AND,  
Chair, Washburn Board of Regents

**Student Misconduct:**

Dean of Students: Morgan Hall, Room 104, 785-670-2100

**NCAA Violations:**

Director of Athletics: Petro Allied Health Center, Room 200, 785-670-1974

**11.2 Retaliation prohibited.** Employees or Students who engage in retaliatory conduct against one who has reported allegations pursuant to these regulations will be subject to disciplinary actions pursuant to established University procedures, up to and including termination of employment or Student status.

**11.3 Confidentiality.** It is the obligation of administrators and supervisors to whom allegations are reported to maintain confidentiality to the extent possible.

## **12. Tuberculosis Control and Prevention**

**12.1 Purpose.** To set forth regulations and procedures established to control and prevent the spread of tuberculosis (TB) among Students.

**12.2 Definitions.** The following definitions apply to these regulations and procedures.

**12.2.1 “Primary Hold”** means the prevention of a Student from registering for future semesters and from having transcripts released or degree conferred.

**12.3 Screening.** All new Students and all Students who have traveled for 90 or more consecutive days to one or more of the countries which present a high risk of contracting TB (See Section 11.9 below) shall be screened to assess the Student’s risk for TB.

**12.4 Primary Screening.** All Students shall undergo a two part screening upon first entry into MyWashburn.

**12.4.1 An online screening shall be an initial assessment of the Student’s risk for TB by asking if the Student:**

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- Has one or more of the following signs or symptoms of active TB disease:
    - Unexplained elevation of temperature for more than 1 week;
    - Unexplained weight loss, night sweats, or persistent cough for more than 3 weeks; and/or,
    - Long-lasting cough producing blood;
  - Has knowingly had contact with a person diagnosed with active TB; or,
  - Was born in or has spent 90 or more consecutive days in a country with endemic TB (high-risk country).

**12.4.2 A computer search of the Student's records shall be done upon the Student's first entry into MyWashburn.** The purpose of this search shall be to determine the country(s):

- Where the Student has attended educational institutions; and,
- In which the Student is showing a return address and/or emergency contacts.

**12.5 Secondary Screening.** A Student who answers yes to any question(s) in the primary screening or whose records show a relationship to a high risk country shall be permitted to register for classes, but shall be required to undergo a secondary screening at the University's Student Health Services (SHS) within 30 days after the primary hold is placed.

**12.6 International Travelers.** This section applies to any Student traveling to a high-risk country for 90 or more consecutive days.

**12.6.1 Such Students shall be counseled regarding risk of TB exposure by SHS.** Additionally, the Student shall be offered a baseline TB test before departure, which test shall be at the expense of the Student.

**12.6.2 Such Students shall be required to undergo one of two medical tests,** at the expense of the Student, sometime between 60 and 90 days after return. The test shall be:

- The Skin Test if no Bacillus Calmette-Guerain (BCG) vaccination; or,
- Interferon Gamma Release Assay (IGRA) test if received BCG.

**12.7 Application of Restrictions.**

**12.7.1 SHS shall obtain a list of Students who fall within one or both** of the two circumstances described in 12.7.2.

**12.7.2 SHS shall place a primary hold on a Student's account when the:**

- Student has given a positive answer to any of the questions listed in 12.4.1 above; or,

- 
- Screening by computer search finds the Student has a return address and/or emergency contacts in a high risk country.

**12.7.3 Any Student suspected of having active TB disease, based upon the secondary screening at SHS,** shall not be allowed to physically attend classes or use University facilities until cleared by the Shawnee County Health Agency (SCHA). (See Section 12.8 below.)

**12.7.4 When a Student is suspected of having active TB disease, SHS shall** notify and refer the Student to the SCHA.

**12.8 Secondary Screening Procedures.** The procedures which shall be followed by SHS and subsequent action by the Student shall be as follows:

- The questions presented to the Student in the primary screening shall be repeated, with more detailed attention to potential TB exposure history;
- When the Student is deemed by SHS to be at low risk, SHS shall release the primary hold;
- If it is determined the Student does have risk of infection, the Student must undergo TB testing at the Student's expense. The test shall be:
  - Skin test if no BCG;
  - IGRA if had BCG.
- If test is negative, SHS shall remove the primary hold on the Student's account;
- If test is positive, the Student shall be referred to the SCHA for further evaluation and possible treatment;
- Upon receipt of records from SCHA, the SHS shall remove the primary hold when such records indicate the Student was examined at SCHA and was determined to be at:
  - Low risk of infection; or,
  - Risk for infection, but declined treatment of Latent TB Infection.
  - Risk for infection and has been treated.

**12.9 High Risk Countries.** Any Country NOT here listed is considered as having endemic TB.

|                        |                       |   |
|------------------------|-----------------------|---|
| Albania                | France                | Slovakia  |
| America Samoa          | Germany               | Slovenia  |
| Andorra                | Greece                | Spain   |
| Antigua and Barbuda    | Grenada               | Sweden  |
| Australia              | Hungary               | Switzerland                                     |
| Austria                | Iceland               | Turks and Caicos Islands                        |
| Bahamas                | Ireland               | United Kingdom of Great Britain & North Ireland |
| Barbados               | Italy                 | United States Virgin Islands                    |
| Belgium                | Jamaica               | United States of America                        |
| British Virgin Islands | Luxembourg            | Wallis & Futuna Islands                         |
| Canada                 | Malta                 |   |
| Chile                  | Nauru                 |   |
| Costa Rica             | Netherlands           |   |
| Cyprus                 | New Zealand           |   |
| Czech Republic         | Norway                |   |
| Denmark                | Saint Kitts and Nevis |   |
| Dominica               | St. Lucia             |   |
| Fiji                   | Samoa                 |   |
| Finland                |                       |   |

(List provided September, 2011 by Kansas Department of Health and Environment.)

**13. Social Media.**

**13.1 Purpose.** To set forth regulations and procedures for the use of social media by Departments, University Groups, Employees, and Students when such use is intended to further the mission of the University.

**13.2 Definitions.**

**13.2.1 “Account Manager”** means the individual primarily responsible for entering and monitoring content of a specific University social media account.

**13.2.2 “Service mark”** means the distinctive letter, word, phrase, logo, or symbol used to distinguish services the University provides from services provided by other organizations.

**13.2.3 “Social Media”** means a group of internet based applications or services which allow the creation and exchange of user-generated content. Examples include, but are not limited to, Facebook, Twitter, YouTube, and blogs.

**13.2.4 “Social Media Account”** means a specific social media site established for the purpose of furthering the mission of the University.

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**13.2.5 “Trademark” (mark)** means a distinctive letter, word, phrase, logo, symbol, or nickname, associated with the University and used on products, and can be distinguished from those of other organizations. “Trademark” also includes intellectual property rights held by the University.

**13.3 Approval.** Approval to establish and maintain a social media account shall be required.

**13.3.1 Approval or denial of proposed social media accounts shall be by the Director of University Relations or designee.**

**13.3.2 Social media accounts which exist as of the effective date of these regulations shall** be reviewed and shall be subject to denial of continued use or required modification.

**13.3.3 The request for approval shall be submitted by the Department Head, University Group president or chairperson, or the Employee or Student, and shall include:**

- Name of the account manager;
- Purpose of the account; and,
- Proposed name of the account.

**13.3.4 The approval process shall include review of:**

- Any logos submitted;
- How the account is to be publicized; and,
- The University’s official social media directory to ensure a similar account does not already exist.

**13.4 Use of University Trademark.** Neither the University mark nor the service mark shall be used in University social media site accounts without prior approval by the Director of University Relations. (See Subject P. Trademark Licensing for additional regulations.)

**13.4.1 When submitting requests to the Director of University Relations for use of the University trademark, include the following information:**

- Marks or service marks to be used; and,
- A brief statement of how it/they would be used.

**13.4.2 The University mark or service mark includes, but is not limited to, the following:**

- Washburn University;
- Washburn Institute of Technology;
- Washburn Ichabods;

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- Washburn Lady Blues;
  - Washburn Tech;
  - Ichabods;
  - Lady Blues;
  - WU; and,
  - BODS.

**13.4.3 Use of a University mark or service mark without prior approval** by the Director of University Relations or designee may result in suspension of approval for continued use of the site as a social media account.

**13.5 Content.** University social media accounts serve as electronic representations of the University, and the content posted must conform to the following.

**13.5.1 The social media account shall not include:**

- Misleading, false, or otherwise untrue statements;
- References endorsing the use of illegal drugs or alcohol;
- Posts which are self-promoting for purposes not University related or which are focused on marketing third party offerings;
- Harassing or discriminatory posts regarding race, color, religion, age, national origin, ancestry, disability, sex, marital or parental status, sexual orientation, or gender identity (See Subject A. General Topics. Topics 2 and 3);
- Inappropriate interactions such as, but not limited to, postings of obscene or vulgar language;
- Confidential or privileged information or any information that would violate an individual right to privacy or the Family Educational Rights to Privacy Act (FERPA); or,
- Information which is confidential or proprietary to the University or to any third party that has disclosed information to the University.

**13.5.2 The social media account shall include:**

- Content primarily focused on the sponsoring Department or other University Group, or University activity, and which is consistent with the goals or mission of the University;
- Disclosure that any personal opinion(s) do not represent the official position of the University;
- Consistent branding by including the:
  - Statement, “An official account of Washburn University;” (except for recognized Student Organizations the statement shall be “A recognized student organization of Washburn University.”)
  - University name; and,
  - Color Pantone 654 for print or Color Pantone 281 for Web-Use when using a custom background; and,

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- Account manager contact information.

### **13.6 Administrative Responsibilities.**

**13.6.1 Social media accounts shall not be routinely monitored by the Administration or designees, however** response shall be made to complaints that an account poorly represents the University, and if appropriate, corrective action shall be taken.

**13.6.2 The Director of University Relations shall provide support to account managers by:**

- Providing or directing account managers to information related to establishing and using social media accounts;
- Providing suggestions for maintaining an active account; and,
- Responding to questions from account managers regarding the social media account and its use.

**13.6.3 The Director of University Relations shall register each social media** account in the University's official social media directory.

**13.6.4 Account managers shall be responsible for all content** the account manager posts and shares.

## **14. Kansas Open Records Act.**

**14.1 Purpose.** To set forth regulations and procedures for the administration of the provision of public records to those who request access to such.

**14.2 Official Record Custodian.** The VPAT shall be the University's Official Record Custodian (ORC) and shall be responsible for the maintenance of public records, regardless of whether such records are in the ORC's actual personal custody and control.

**14.2.1 The ORC may designate an Employee to carry out** the custodial duties of the ORC.

**14.2.2 The administration of the duties of the ORC shall be consistent with** K.S.A. 45-215 *et seq* and amendments.

**14.3 Freedom of Information Officer.** The University Counsel shall be the Freedom of Information Officer (FIO) and shall respond to individuals seeking access to University records.

**14.4 Procedure for Fulfilling Request.**

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**14.4.1** When a request to inspect and/or obtain a copy of a public record is received by an Employee, the Employee shall immediately inform the Department Head. The Department Head in turn shall immediately inform the ORC and the FIO.

**14.5 Fees.** The following fees may be charged for providing access to or furnishing copies of public records:

- Scanned or copied documents \$ 0.20 per page;
- Postage/shipping, \$0.50 plus actual charges \$ 1.50 minimum;
- Facsimile \$ 0.80 per page;
- Electronic data retrieval \$50.00 per hour;
- Access/inspection costs are determined on case by case basis.

## **15. Religious Accommodations.**

**15.1 Purpose.** To set forth regulations and procedures for reasonably accommodating Employees and Students for purposes related to their sincerely held religious beliefs (Religious Accommodation).

**15.2 Religious Accommodation for Employees.** Consistent with the University's respect for the right of an Employee to adhere to a system of religion, the University prohibits discrimination against an Employee because of a sincerely held religious belief.

**15.2.1 University supervisors/Department Heads shall provide to each Employee reasonable accommodation for religious observance** with regard to work requirements unless the accommodation would:

- Create an undue hardship on the University; or,
- Fundamentally alter the nature and requirements of a job.

**15.2.2 Examples of a reasonable accommodation for religious observance include,** but are not limited to:

- Adjusting a work schedule; and,
- Modification of required dress.

**15.2.3 Each Employee shall be responsible for satisfying all requirements of the position regardless** of any religious accommodation granted at the request of the Employee.

**15.2.4 Employees shall request of their supervisor/Department Head permission to take time off work no less than** one week in advance of the date of the religious holiday to be observed.

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**15.2.5 The time off may be taken without pay, or with pay if sufficient personal leave accumulation exists, or made up with an approved alternative work schedule, provided the alternate schedule does not create overtime hours.**

**15.2.6 In recognition that religion is a private matter, supervisors/Department Heads shall** make every reasonable attempt to respect the Employee's privacy when making the accommodation.

**15.2.7 Supervisors/Department Heads shall have the right to request the Equal Opportunity Director obtain documentation from the Employee's religious leader which:**

- Attests to the date/time of the conflict or the reason for the requested accommodation; and,
- Confirms the Employee has a sincerely held religious belief.

**15.2.8 If the Employee and Supervisor cannot agree upon an accommodation, the Employee may** bring the matter to the attention of the Equal Opportunity Director in order to attempt to reach a mutually agreeable solution.

**15.2.9 Any complaint of discrimination may be brought to the Equal Opportunity Director as set out** in the Washburn University Policies, Regulations and Procedures Manual Section A. General Topics 1.4.

**15.3 Religious Accommodation for Students.** Consistent with the University's respect for the right of a Student to adhere to a system of religion, discrimination against a Student because of the Student's sincerely held religious belief will not be permitted.

**15.3.1 University faculty members shall provide a reasonable accommodation** for religious observance with regard to academic work requirements unless the accommodation:

- Would create an undue hardship on the University; or,
- Fundamentally alter the nature and requirements of a course.

**15.3.2 In recognition that religion is a private matter, faculty members shall** make every reasonable attempt to respect the Student's privacy when making the accommodation.

**15.3.3 Examples of a reasonable accommodation for religious observance include,** but are not limited to:

- Re-scheduling an examination or allowing a make-up examination for the Student;
- Altering the time and/or date of a Student's class presentation;

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- Arranging for flexibility in assignment due dates;
  - Altering an attendance policy; or,
  - Allowing a Student to complete an alternative assignment for missed class work.

**15.3.4 Faculty members may require the Student be responsible for satisfying all requirements, academic objectives, and prerequisites as defined by the faculty member and the University regardless of any accommodation granted at the request of the Student.**

**15.3.5 The faculty member shall have the right to request the Equal Opportunity Director obtain documentation from the Student's religious leader which:**

- Attests to the date/time of the conflict; and,
- Confirms the Student has a sincerely held religious belief.

**15.3.6 The Student must provide the faculty member a request for a reasonable accommodation for religious observance within a reasonable time prior to the needed accommodation. Students are expected to:**

- Examine the course syllabus of potential conflicts with holy days or religious observances and to notify the instructor within the first week of classes (or as soon thereafter as possible) of conflicts that may require an absence; and,
- Make arrangements in advance with the faculty member to make up any missed work or class assignments within a reasonable time period.

**15.3.7 If the Student and the faculty member cannot agree upon an accommodation, the Student may bring the matter to the Department Chair (or Dean, depending upon the school) for a decision. If there is still no agreement, the Student may bring the matter to the attention of the Equal Opportunity Director in order to attempt to reach a mutually agreeable solution.**

**15.3.8 Any complaints may be brought to the Equal Opportunity Director as set out in the Equal Opportunity Discrimination Complaint Procedure.**

<https://washburn.edu/statements-disclosures/equal-opportunity/how-to-file-a-complaint.html>

## **16 Title IX (Sexual Harassment and Sexual Violence)**

**16.1** Washburn University is committed to providing an environment for individuals to participate in its education programs or activities free from sexual harassment or discrimination. These regulations set out how the University will promptly respond to reports of sexual harassment involving students.

**16.1.1** Sexual harassment is prohibited by Federal Law (commonly known as Title IX) and by University policy. Sexual harassment as defined below is a form of sex discrimination.

**16.1.2** The Title IX Coordinator, or designee, is the designated official with authority to institute corrective measures on behalf of the University. See Section 16.4 for more information about reporting allegations of sexual harassment.

### **16.2 DEFINITIONS**

**16.2.1 Advisor.** An Advisor under this regulation and procedure is a person who is to be present with a party to provide them assistance throughout the entire Title IX process. A party may have anyone, including an attorney, although the advisor does not need to be an attorney, to serve as their Advisor. The one exception to that rule is that any person that a party intends to have testify at the Formal Hearing cannot serve as an Advisor. An Advisor will, on behalf of the party whom they are advising, ask questions of witnesses who testify at the Formal Hearing.

**16.2.2 Complainant.** The individual who is alleged to be the victim of conduct that could constitute sexual harassment under this policy.

**16.2.3 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 graduate students other than in the School of Law, it is the Associate Vice President for Student Life; for law students, it is the Associate Dean for Student Affairs; for Washburn Tech students it is Associate Dean & Director of Student Services; for staff within academic affairs and for faculty, it is the Vice-President for Academic Affairs; for all other staff, it is the Vice-President for Administration and Treasurer.

**16.2.4 Consent.** Consent is the communication, verbally or by actions, 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.

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- 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.

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

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

**16.2.5 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. 34 U.S.C. 12291(a)(10)

**16.2.5.1** Dating violence includes, but is not limited to, sexual, physical or emotional abuse or the threat of such abuse. It can be a single act or pattern of behavior in relationships. It does not include acts covered under the definition of domestic violence.

**16.2.6 Days.** Whenever time is given in terms of “days”, that term shall always mean calendar days unless there is a specific reference to business days, which would refer only to any weekday (Monday through Friday) when the University is open for business.

**16.2.7 Decision-maker.** Means a person or persons who make a determination of responsibility after a Formal Hearing or a determination on an appeal. The Title IX Coordinator, although deciding if a Formal Complaint should be dismissed or if an appeal to an Emergency Removal order should be granted or denied, is not considered a Decision-maker for purposes of this regulation.

**16.2.8 Domestic Violence.** The term “domestic violence” includes 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

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violence laws of the jurisdiction receiving grant monies, 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 the jurisdiction. 34 U.S.C. 12291(a)(8)

**16.2.9 Education Program or Activity.** Includes locations, events or circumstances over which the University exercises substantial control over both the Respondent (as defined below) and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University. For purposes of this policy/regulation, Education Program or Activity does not include programs or activities that occur outside of the United States.

**16.2.10 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).

**16.2.10.1** 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.

**16.2.11 Materially False Statement or Evidence.** means any statement made or item of evidence provided by any person, either during the investigation by the Title IX Coordinator or during the Formal Hearing, when at the time the statement or evidence is presented 1) the person presenting the statement or evidence knew that the statement or evidence was false; and 2) the statement or evidence would be deemed Relevant as defined under this Title IX policy.

**16.2.12 Respondent.** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**16.2.13 Relevant Evidence** - Evidence is relevant if:

- it has any tendency to make a fact more or less probable than it would be without the evidence; and
- the fact is of consequence in determining the action. (Fed. Rules of Evidence, Rule 401)

**16.2.14 Responsible Employee.** For purposes of this policy, “Responsible Employees” are deans, directors, chairpersons, administrators, supervisors, faculty, instructors, academic advisors, resident assistants, peer educators, coaches, and advisors to student groups. Any University employee who accompanies students off-campus on a University Education Program or Activity 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

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(<http://www.washburn.edu/securityreport>). Employees who have a legally recognized privileged relationship with the complainant, (e.g., professional counseling services provider) do not constitute Responsible Employees.

**16.2.15 Retaliation.** No person may intimidate, threaten, coerce, or discriminate against any individual (including any individual who intervened to stop or attempt to stop sexual harassment) for the purpose of interfering with any right or privilege secured by Title IX or the corresponding regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this regulation or opposed this regulation or a practice under this regulation because it is discriminatory.

**16.2.15.1** Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from participating in any process in this regulation.

**16.2.15.2** Intimidation, threats, coercion or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or the corresponding regulations, constitutes retaliation.

**16.2.16 Sexual Assault** means any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent. 20 U.S.C. 1092(f)(6)(A)(v)

**16.2.17 Sexual Harassment.** Means conduct on the basis of sex that satisfies one or more of the following:

- An employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct; OR
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a University Education Program or Activity; OR
- Meets the definition of Sexual Assault, Dating Violence, Domestic Violence or Stalking as defined in these regulations.

**16.2.17.1** Conduct may be any behavior, including but not limited to, verbal, physical or electronic.

**16.2.18 Stalking.** Means engaging in a course of conduct directed at a specific person that would cause a reasonable person to either 1) fear for

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his/her/their safety or the safety of others; or 2) suffer substantial emotional distress. 34 U.S.C. 12291(a)(30)

**16.2.18.1** Kansas law defines “course of conduct” as two or more acts over a period of time, which indicates a continuity of purpose. A course of conduct shall not include constitutionally protected activity nor conduct that was necessary to accomplish a legitimate purpose independent of making contact with the target person. K.S.A. 21-5427(f)(1)

**16.2.18.2** Course of conduct shall include one or more of the acts listed in Kansas Statutes Annotated Section 21-5427(f)(1). Examples of these include: Threatening the safety of the targeted person or a member of such person’s immediate family; or Following, approaching or confronting the targeted person or a member of such person’s immediate family.

**16.2.18.3** 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 may be investigated as such by law enforcement. See K.S.A. 21-5427

**16.2.19 Title IX Coordinator.** The Title IX Coordinator as used in this procedure, shall mean the Equal Opportunity Director for the University, or any person acting on behalf or in place of the Equal Opportunity Director. Contact information for the Title IX Coordinator is:

- Phone Number: 785.670.1509
- E-mail: [eodirector@washburn.edu](mailto:eodirector@washburn.edu)
- In person: Morgan Hall, Room 200K
- [www.washburn.edu/equal-opportunity](http://www.washburn.edu/equal-opportunity)

**16.2.20 Unwelcome.** Conduct is considered “unwelcome” if the individual did not consent to the conduct, solicit or incite the conduct, and considered the conduct to be undesirable or offensive.

## 16.3 GENERAL RULES

**16.3.1 Academic Freedom and Freedom of Expression.** These regulations 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.

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

**16.3.3 Confidentiality.** Participants in this Title IX process have privacy rights and reasonable expectations of confidentiality in the investigation of matters. The Title IX Coordinator, and the University, will maintain confidential, to the extent possible, the Formal Complaint, investigative

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report, witness statements, and any other information provided by the Complainant, Respondent, or witnesses. This information will be disclosed only to the following individuals:

- Complainant, Respondent, or witnesses, as necessary to give fair notice of the allegations and to conduct the investigation;
- Decision-makers at both the Formal Hearing and Appeal stages;
- Law enforcement consistent with state and federal law;
- Other University officials as necessary for coordinating supportive measures or for health, welfare, and safety reasons; and
- Government agencies who review the University's compliance with federal law.

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

**16.3.4 Conflict of Interest.** No person may serve in the position of Title IX Coordinator, investigator or decision-maker in this Title IX process who has a general bias against Complainants or Respondents generally or an individual Complainant or Respondent.

**16.3.5 False statements or information.** Persons who knowingly provide materially false or misleading information, as defined above, are subject to disciplinary action. A determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

**16.3.6 Objective evaluation of the evidence.** All persons involved in the evaluation of the evidence, whether through the Investigation process or the Formal Hearing process, must take an objective evaluation of the evidence – including both inculpatory and exculpatory evidence. Further, credibility determinations may not be based on a person's status as a Complainant, Respondent or witness.

**16.3.7 Retaliation.** All persons who participate or refuse to participate in any way in this Title IX process are to be free from Retaliation as defined in Section 16.2.15 above. Any person who believes they have been retaliated against should report the retaliatory behavior to the Title IX Coordinator. Retaliation charges resulting from matters under this Title IX process shall be investigated and resolved through this Title IX process.

**16.3.8 Retention of Records.** The Title IX Coordinator shall maintain records for any investigation, Formal Hearing, determination of responsibility, appeals informal resolution, and training materials, for a period of seven (7) years.

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**16.3.9 Standard of evidence.** The standard of evidence to be used in determining responsibility under this policy is preponderance of the evidence.

## **16.4 REPORTING ALLEGATIONS AND SUPPORTIVE MEASURES**

**16.4.1 Reporting allegations of Sexual Harassment.** Allegations of Sexual Harassment must be reported to the Title IX Coordinator for the University to have **actual knowledge** of the allegations. Notification to the Title IX Coordinator shall allow for Supportive Measures to be made available to the Complainant and, if the Complainant desires, to promptly initiate the processes set out in this regulation, including the Informal Resolution Process.

**16.4.1.1 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. After calling the police, report the incident to the Title IX Coordinator as defined above.

**16.4.1.2 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 ensure the safety and well-being and the University community.

**16.4.1.3 PROTECTION FOR PARTIES.** The U.S. Department of Education Title IX regulations, effective August 14, 2020, state that in order to ensure that all available and reasonable supportive measures can be provided to the Complainant and/or the Respondent, the Title IX Coordinator must be notified of allegations of Sexual Harassment.

- This requirement ensures that all of the supportive measures as well as the rights of the parties will be explained to each party; and
- This requirement legally obligates the University, upon receiving actual knowledge of the allegations, to offer all such available and reasonable supportive measures to the parties.

**16.4.1.4 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.

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**16.4.2 Responsible Employees are encouraged to report any incident of sexual harassment** to the Title IX Coordinator 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.

**16.4.2.1** Incidents learned of in class assignments or “Take Back the Night”-type public events will not trigger a report to the Title IX Coordinator.

**16.4.3 Reporting allegations outside of the Title IX Coordinator.** While these methods are acceptable and appropriate, they will not trigger actual knowledge to the University. A Complainant may choose to report allegations to the Title IX Coordinator and the police concurrently.

**16.4.3.1** To initiate a criminal investigation, contact the Washburn University Police Department:

- Phone: 785-670-1153
- Email: [police@washburn.edu](mailto:police@washburn.edu)
- In person: Morgan Hall, Room 156

**16.4.3.2** To file a complaint with a State or Federal Agency, contact one of the following:

- Office of Civil Rights in the Department of Education (students):  
[https:// ocrcas.ed.gov](https://ocrcas.ed.gov)
- Equal Employment Opportunity Commission (employees):  
[www.eeoc.gov/employees/howtofile.cfm](http://www.eeoc.gov/employees/howtofile.cfm)
- Kansas Human Rights Commission (any incident):  
<http://www.khrc.net/complaint.html>

**16.4.4 Title IX Coordinator Response.** Upon receipt of actual knowledge of the allegations, whether from the Complainant or another person, the Title IX Coordinator shall promptly contact the Complainant.

**16.4.4.1 Complainant Rights.** When contacting the Complainant, the Title IX Coordinator shall:

- Discuss the availability of Supportive Measures;
- Consider the Complainant’s wishes with respect to supportive measures;
- Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint;
- Explain the process for filing a formal complaint;
- Discuss appropriate definitions related to the allegations;
- Inform the Complainant of the presumption that Respondent is not responsible for the alleged conduct until the decision-maker

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has had a chance to review all of the relevant information after the Formal Hearing;

- Discuss the range of sanctions that may be imposed on the Respondent if the Respondent is found responsible for violating the policy;
- Explain the right of the Complainant to appeal the decision of the decision-maker after a Formal Hearing, the grounds necessary to file an appeal, and also the right to appeal a decision by the Title IX Coordinator to dismiss the Formal Complaint;
- Advise the Complainant of the right to have an advisor (a maximum of two) of their choice present during all stages of the Investigation and Resolution of the Allegations. One advisor may be but is not required to be an attorney;
- Explain the opportunity to participate in the Informal Process if the Complainant would so desire;
- Discuss confidentiality of the information provided to the Title IX Coordinator;
- Advise the Complainant about protections against retaliation.
- Any other rights and resources available to the Complainant, both on and off campus; and
- If it can be determined at this time that a Formal Complaint would be required to be dismissed pursuant to Section 16.5.2.1 below, refer the Complainant to another University process to address the matter, e.g., non-discrimination process, student conduct code.

**16.4.5 Supportive Measures.** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

**16.4.5.1 The filing of a Formal Complaint is NOT required in order for supportive measures to be provided to the Complainant or Respondent.**

**16.4.5.2** The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures for both the Complainant and Respondent.

**16.4.5.3** Such measures are designed to restore or preserve equal access to the University's Education Programs and Activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment.

**16.4.5.4** Supportive Measures include:

- Changes to campus housing, class or work schedules
- Rescheduling of class or work assignments and deadlines

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- Transportation assistance, including police escorts to car
  - Mutual restrictions on contact between parties
  - 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
  - Assistance in locating off-campus resources, i.e. victim advocacy, mental health, medical services, legal services, etc.

**16.4.5.5 Emergency Removal of Respondent.** If the University considers removal of a Respondent from any Educational Program or Activity, the University shall:

**16.4.5.5.1** Conduct an individualized risk analysis to determine if there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment that justifies removal.

- If Respondent is a student, the risk analysis shall be performed by the Associate Vice-President for Student Life;
- If Respondent is an employee, the risk analysis shall be performed by the Director of Human Resources;

**16.4.5.5.2** If such analysis justifies removal of the Respondent, University shall:

- Notify Respondent of the decision; and
- Advise that Respondent shall have two (2) business days in which to request an appeal of that decision.

**16.4.5.5.3** If Respondent requests an appeal of the removal decision, the Title IX Coordinator shall grant a hearing within two (2) business days of receiving the request for an appeal.

- The hearing shall consist of a meeting between the Respondent and the Title IX Coordinator.
- The Respondent may have an advisor present during this meeting.

**16.4.5.5.4** The Title IX Coordinator shall issue a ruling on the appeal in writing within one (1) business day after the hearing. There shall be no other appeals of this determination.

**16.4.5.6 Confidentiality of support measures.** Any supportive measures provided to either the Complainant or Respondent shall be held confidential by the University to the extent that maintaining the

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confidentiality will not impair the University's ability to provide the supportive measures.

- 16.4.5.7 Documentation.** The Title IX Coordinator shall document all supportive measures considered, offered, and implemented. If a party chooses not to receive any of the Supportive Measures offered, that shall also be documented.

## **16.5 FORMAL COMPLAINT RESOLUTION PROCESS**

**16.5.1 Formal Complaint.** To Initiate the Complaint Resolution Process a Formal Complaint must be filed. A Formal Complaint is a document filed either by the Complainant or the Title IX Coordinator.

**16.5.1.1** The Formal Complaint shall contain facts that establish the basis of the allegation(s).

**16.5.1.2** Must be signed (The signature may be physical or digital) by either the Complainant or the Title IX Coordinator.

- At the time of the filing of the Formal Complaint, the Complainant must be participating in or attempting to participate in an education program or activity
- The Title IX Coordinator may file a Formal Complaint if the complainant is not participating in or attempting to participate in an education program or activity; or the Title IX Coordinator determines a threat exists to the safety of the University community.

**16.5.1.3** Contacting the Title IX Coordinator or otherwise providing Notice of Rights of sexual harassment does not serve as a filing a Formal Complaint. Upon receiving notice, the Title IX Coordinator shall contact the Complainant to schedule an initial meeting.

- At the initial meeting, the Title IX Coordinator meets with the Complainant as set out in Section 16.4.4.1 above, to ensure that the Complainant understands all rights and responsibilities under this Title IX procedure, including the right to receive supportive measures without filing a Formal Complaint.
- The Complainant will decide whether to file a Formal Complaint, requesting the University to investigate the allegation(s) of Sexual Harassment;
- At this meeting, the Complainant will receive written information consistent with the Notice of Rights, as described below.

**16.5.1.4** If the Formal Complaint is signed by the Title IX Coordinator, then a written Notice of Rights, as described below, shall be provided to the Complainant as well as the Respondent.

**16.5.1.5 Consolidation of Formal Complaints.** The Title IX Coordinator may consolidate Formal Complaints as to allegations against more

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than one Respondent or by more than one Complainant against one or more Respondents where the allegations of sexual harassment arise out of the same facts or circumstances.

**16.5.2 Dismissal of a Formal Complaint.** Upon receipt of the Formal Complaint, the Title IX Coordinator shall review the allegations and facts contained in the Formal Complaint.

If the Title IX Coordinator dismisses the Formal Complaint for any of the reasons stated below, the Title IX Coordinator shall send, within seven (7) days, written notice of the dismissal to the parties and shall include the reason(s) for the dismissal. Decision to dismiss the Formal Complaint may be appealed pursuant to the appeal process as set out in Section 16.9.

Dismissal of the Formal Complaint does not preclude action under another disciplinary process at the University. If one or more other processes is available at the University, the Title IX Coordinator shall inform the Complainant of the other processes available and assist the Complainant, if desired, in connecting to the other processes.

**16.5.2.1** The Formal Complaint must be dismissed if the Title IX Coordinator determines, either at this stage or at any other stage of the investigation, that one of the following conditions exists:

- The alleged conduct did not occur in an Educational Program or Activity;
- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; OR
- The conduct alleged occurred outside the United States.

**16.5.2.2** The Formal Complaint may be dismissed by the Title IX Coordinator at any stage of the investigation or hearing in the following circumstances:

- The Complainant notifies the Title IX Coordinator in writing of the intent to withdraw the formal complaint or any allegations therein. Before the Title IX Coordinator dismisses a Formal Complaint for this basis, the Title IX Coordinator should be satisfied that the Complainant is not intending to withdraw the complaint due to any retaliation or threatened retaliation due to the filing of the Formal Complaint;
- The Respondent is no longer enrolled or employed at the University; OR
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the allegations contained in the Formal Complaint.

**16.5.3 Meeting with Respondent.** After the Formal Complaint is filed, the Title IX Coordinator shall contact the Respondent to set up a meeting and to inform the Respondent of the right to have an advisor, who could be,

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but is not required to be, an attorney, at the meeting. The Title IX Coordinator will advise the Respondent of the following:

- That Respondent has been alleged to have sexually harassed the Complainant and also provide to Respondent a written statement or summary of the allegations as part of the Notice of Rights;
- This Title IX process for Investigation and Resolution of Allegations, including Informal Resolution Process;
- That the Respondent is presumed not responsible for the alleged conduct until there is a determination regarding responsibility at the end of the Formal Process or the matter is otherwise resolved;
- Discuss the range of sanctions that may be imposed on the Respondent if found responsible after a Formal Hearing;
- The right to have an advisor (a maximum of two) of their choice present during all stages of the Investigation and Resolution of the Allegations. One advisor may be, but is not required to be, an attorney;
- Discuss the availability of Supportive Measures;
- Consider the Respondent's wishes with respect to Supportive Measures;
- Discuss the Respondent's right to appeal the decision of the decision-maker after the Formal Hearing and the grounds necessary to file an appeal;
- Discuss confidentiality of information provided to the Title IX Coordinator;
- Advise of the right to provide names of witnesses as well as any other evidence to be considered in the investigation even if Respondent chooses not to respond to the Formal Complaint;
- Discuss the University's policy against retaliation; and
- Advise the Respondent that a response to the allegations, either in writing or in person, is not required. If the Respondent chooses to respond, the response will be due within seven (7) days of the meeting date. The process will continue with or without a response.

**16.5.4 Notice of Rights.** At the conclusion of the meeting, the Title IX Coordinator shall give the Respondent a written Notice of Rights, which will provide a) information about this Title IX process; b) a statement or summary of the allegations; c) a statement that the Respondent is presumed not responsible for the alleged conduct until a determination is made at the end of the Formal Process or the matter is resolved in some other fashion; and d) the Respondent may have an advisor, who may be, but is not required to be, an attorney, at all stages of the proceedings.

## **16.6 INFORMAL RESOLUTION PROCESS.**

**16.6.1** After a Formal Complaint has been filed, the Title IX Coordinator will advise the Complainant and Respondent when the Informal Resolution

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Process can be used to resolve a Formal Complaint in appropriate circumstances. The informal process is not available where the allegations involve an employee sexually harassing a student.

**16.6.2** The Informal Resolution process can be used to resolve allegations of sexual harassment by taking immediate action to eliminate a hostile environment, prevent its recurrence, and remedy the discriminatory effect.

- This process does not involve a full investigation or determine if this policy was violated.
- It may include the Supportive Measures listed above, training or educational programming, or other remedies that support the University's commitment to equal educational and employment opportunity.
- The individual who facilitates the informal resolution process will be appropriately trained as further explained below in Section 16.11 Training.

**16.6.3 Requirements:**

- A Formal Complaint must be filed.
- Both parties voluntarily agree, in writing, to participate.
- Before agreeing, both parties will be provided, in writing, the allegations in the Formal Complaints and an explanation of the informal resolution process, including consequences of participation.

**16.6.4 Rights of Both Parties.** During an informal resolution process, both parties have the following rights:

- The parties may agree to enter the informal process at any time prior to a determination regarding responsibility.
- Either party may withdraw from the informal process at any time prior to a resolution and choose to continue with the formal hearing process.
- By participating in the informal resolution process, a party does not waive any right to an investigation or adjudication of a Formal Complaint of sexual harassment.
- Neither party is required to participate in the informal resolution process.
- Enrollment, employment, or other rights are not conditioned upon participation.
- The informal resolution process is confidential. This means the mediator/facilitator, parties, and others involved in the process will not share an admission, representation, or statement made during the proceeding or any information specific to the mediation unless all parties consent or as otherwise required by law. K.S.A. 5-512

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**16.6.5 Process:** When both parties have agreed in writing to the informal resolution process, the Title IX Coordinator will arrange for mediation or facilitate resolution. This allows both parties to come to a mutual agreement regarding resolution of the allegations.

- For example, both parties may agree that certain Supportive Measures like a mutual no contact agreement are sufficient to resolve the allegations.

**16.6.5.1** The parties will not be required to deal directly with one another without the University's involvement.

**16.6.5.2** Once the process is complete, both parties will be notified simultaneously, consistent with FERPA or applicable laws, of the resolution.

**16.6.5.3** The process does not conclude with a finding of responsibility for a policy violation.

**16.6.5.4** If either party withdraws from the informal process, the Investigation and Formal Hearing process described below will commence.

- Any notes by the mediator cannot be used in the Formal Hearing and the mediator cannot be called as a witness during the Investigation or Formal Hearing.
- Any evidence produced by either party during this process may be used during the Formal Hearing. However, no statements made by either party during the Informal Resolution Process may be used at the Formal Hearing.

**16.6.5.5** There is no appeal of a resolution agreed to by the parties.

**16.6.5.6** If either party violates an agreement reached during the Informal Resolution Process, the violating party will be referred to the appropriate disciplinary procedure for further consideration.

**16.6.5.7** If the matter is resolved through mediation, the mediator shall notify the Title IX Coordinator in writing of the terms of the resolution.

**16.6.6 Record keeping:** The Title IX Coordinator will only record that the requirements for the informal resolution process were met and the mutually agreed-upon resolution with the relevant Formal Complaint file.

## **16.7 INVESTIGATION.**

**16.7.1** Unless the Formal Complaint is dismissed pursuant to Section 16.5.2 above, or the parties have agreed to enter the Informal Process, the Title IX Coordinator shall investigate the allegations contained in the Formal Complaint.

**16.7.2** All persons covered under this policy are required to fully cooperate with the Title IX Coordinator during an investigation and to provide information and materials such as official personnel or student files and

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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.

**16.7.3** During the Investigation process, any Advisor may confer privately or in writing with a party, but the Advisor cannot speak on behalf of a party or answer a question on behalf of a party.

**16.7.3.1** If a party intends to have an attorney as an Advisor for any process during the Investigation, the party shall notify the Title IX Coordinator at least three business days in advance of any meeting with the Title IX Coordinator so that University Counsel may also be present or available for any legal questions that may arise.

**16.7.4** In conducting the investigation, the Title IX Coordinator shall consider the following:

**16.7.4.1** Interviews with the parties.

- Before any meeting with a party, the Title IX Coordinator shall provide the party with written notice of the date, time, location and purpose of the meeting with sufficient time for the party to prepare for the meeting.
- If information is learned during the investigation that requires further questioning of a party, the Title IX Coordinator may contact the party for further information

**16.7.4.2** Fact and expert witnesses provided by the parties;

**16.7.4.3** All evidence provided by the parties;

**16.7.4.4** Speaking to any other persons that the Title IX Coordinator believes may have information that could help reach a determination regarding responsibility for the allegations;

**16.7.4.5** Any evidence that the Title IX Coordinator believes may help reach a determination regarding responsibility for the allegations. This could include, but is not limited to:

- E-mail communications or text messages to or by the parties or about the alleged conduct;
- Education records that relate to information provided by either of the parties or witnesses;
- Review of video or audio recordings relating to the alleged conduct or statements made by either of the parties;
- Review reports of law enforcement regarding the alleged conduct if any such reports exist.

**16.7.4.6** The Title IX Coordinator may NOT consider, access, disclose or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized

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professional or paraprofessional acting in the professional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the party provides a voluntary, written consent to do so for this Title IX process. This includes the campus advocate.

**16.7.5** If during the investigation, the Title IX Coordinator determines additional allegations of conduct about either the Complainant or Respondent are to be investigated, the Title IX Coordinator must provide a notice of the additional allegations to the parties whose identities are known.

**16.7.6 Advisor.** Parties must have an Advisor who will conduct cross-examination at the Formal Hearing. If a party has not identified an Advisor at this point in the process, the University will appoint one so the Advisor can be properly prepared for the Formal Hearing. The University will provide an Advisor to a party at no charge.

**16.7.6.1** The Title IX Coordinator, before the next step of providing evidence to the parties for review, shall contact any party who has not identified an Advisor and provide a list of available Advisors.

- A party can select an Advisor from the list who will serve that role during the remainder of the process, including the review of evidence and the Formal Hearing.
- If one party has an Advisor who is an attorney, the University will provide a list of possible advisors with formal legal training (either licensed attorneys or law students with appropriate training).
- If a party has identified an Advisor who is not an attorney, or neither party has an Advisor, then the University will provide a list of available Advisors who do not have any legal training (trained faculty or staff).

**16.7.7 Review of Evidence.** When the Title IX Coordinator has completed the investigation, but before preparing the investigative report, the Title IX Coordinator shall provide the parties and their advisors, if any, access to ALL evidence that is related to the allegations contained in the Formal Complaint, regardless of the source of the evidence, including evidence upon which the Title IX Coordinator does not intend to rely.

**16.7.7.1** This evidence shall be provided in either hard copy or electronic format and sent to the parties and their advisors.

- If there is any evidence that is not in the control of the Title IX Coordinator, i.e. evidence being held by law enforcement, or is so large that sending to the parties is not reasonable, i.e. video or audio tape, the Title IX Coordinator shall assist the parties in getting access to review the evidence.

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**16.7.7.2** Each party shall have ten (10) days from the date the evidence is sent or after evidence is otherwise reviewed to provide a written response to the Title IX Coordinator regarding the evidence presented.

**16.7.7.3** Prior to completing the investigative report, the Title IX Coordinator shall review and consider the responses received from the parties regarding the evidence.

**16.7.8 Investigative Report.** The Title IX Coordinator shall then prepare an investigative report summarizing the evidence. The Title IX Coordinator shall send a copy of the investigative report to the parties and advisors at least ten (10) days prior to the hearing.

**16.7.8.1** The Parties shall have the right to prepare a written response to the investigative report and shall submit the responses to the Title IX Coordinator.

**16.7.8.2** Such written responses along with the Investigative Report, shall be provided to the decision-maker no later than two business days before the Formal Hearing is scheduled to begin.

## **16.8 FORMAL HEARING**

**16.8.1** The Formal Hearing shall be a live hearing. The hearing will be held on the University's campus and all of the parties and their advisors, and witnesses shall appear in that same room.

**16.8.1.1** At the request of either party, the University shall provide for the parties and their advisors to be located in separate rooms with technology enabling the decision-maker and the parties to simultaneously see and hear the party or the witness answering questions.

**16.8.2** The University will arrange for a decision-maker who will preside over the Formal Hearing. The decision-maker for the Formal Hearing cannot be the Title IX Coordinator or anyone else who has been involved in the investigation of the alleged conduct.

**16.8.2.1** As soon as practicable, the Title IX Coordinator shall request available dates from the parties and their advisors for the Formal Hearing and then work with the decision-maker to find a date that is available for all parties.

- The Title IX Coordinator shall take into consideration the amount of time considered necessary to complete the investigation and provide the parties their allowed time to review the evidence and then review the investigative report.
- The hearing date may be continued by request of either party or the Title IX Coordinator. The decision-maker shall determine if the request should be granted and set a new Formal Hearing date.

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- The Formal Hearing will be held no sooner than thirty (30) days nor later than sixty (60) days after the Formal Complaint is filed.

**16.8.3 Not appearing at the Formal Hearing.** If a party does not appear at the Formal Hearing, then that party waives and loses all rights available at a Formal Hearing. This includes the right to cross-examine witnesses, the right to have an advisor appointed to conduct cross-examination for them, and the right to request any evidence be considered by the decision-maker.

**16.8.4 Procedure during the Formal Hearing.**

**16.8.4.1** The decision-maker shall open the hearing by reading the allegations contained in the Formal Complaint, and the names of the parties.

**16.8.4.2** The Title IX Coordinator shall testify about the investigation conducted and the relevant evidence collected during the investigation.

- Any documents, photographs, etc., obtained or used by the Title IX Coordinator in the investigative report shall be presented to the decision-maker during this testimony.

**16.8.4.3** The Complainant shall then have the opportunity, but is not required, to present any witnesses or other evidence the Complainant desires to be considered by the decision-maker that has not already been presented by the Title IX Coordinator.

**16.8.4.4** The Respondent shall then testify and have the opportunity, but is not required, to present any witnesses or other evidence the Respondent desires to be considered by the decision-maker that has not already been presented by the Title IX Coordinator.

**16.8.4.5** Each party's advisor shall be allowed to ask any witness relevant and follow-up questions, including questions challenging credibility. The questioning shall be conducted directly, orally and in real-time. The parties shall not be allowed to ask any questions directly of any witnesses.

**16.8.4.6** The decision-maker is free to ask any questions of any individual who testifies. If the decision-maker asks questions after the advisors have had their opportunity to ask questions of the individuals testifying, then the decision-maker shall allow each advisor to ask additional questions regarding the information elicited from the decision-maker's questions.

**16.8.4.7** The parties shall then be able to make a closing statement if they choose, following the same order as the presentation of evidence.

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The decision-maker shall set a time limit for the closing statements by each party.

**16.8.4.8** The following rules shall apply to all Formal Hearings:

- Formal rules of evidence as used in Federal and State courts do not apply, although the decision-maker may rely on such rules as guidance for any rulings and determinations of evidence.
- Witnesses, other than the parties, shall only be present in the hearing while they are testifying and being questioned.
- Only relevant questions may be asked of an individual who testifies. Before a question is answered, the decision-maker must first determine if the question is relevant. If the decision-maker determines that a question is not relevant and excludes the question, the decision-maker must provide an explanation as to why the question is being excluded.
- Determination of relevance shall be based on the definition of Relevant Evidence as provided in this Title IX policy.

**16.8.5. Evidence.**

**16.8.5.1.** All evidence in control of the Title IX Coordinator shall be made available to both parties to use during the Formal Hearing. If any evidence relied on by the Title IX Coordinator is not within the control of the Title IX Coordinator, the Title IX Coordinator shall assist the party in getting control or use of the evidence for the Formal Hearing.

**16.8.5.2.** Questions or evidence about Complainant's sexual predisposition or prior sexual behavior are not relevant unless:

- Such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant;  
OR
- Questions and evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove consent.

**16.8.5.2.1** The decision-maker will take into account the definition of Consent as stated in Section 16.2.4 above in determining if the questions and evidence are relevant for the issue of consent.

**16.8.5.3** The decision-maker shall *not* consider any statements made by any witness that a) are included in the investigative report or the evidence made available to the parties; or b) were made at the

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Formal Hearing, if that witness did not appear or did not otherwise subject themselves to cross-examination by the opposing party's advisor or by the decision-maker. The one **exception to this rule** is as follows – If either party makes an inculpatory statement

- to the Title IX Coordinator during the investigation AND that statement is included in the investigative report OR
- while testifying at the Formal Hearing.

Then the decision-maker may consider that statement when determining responsibility for any of the allegations in the Formal Complaint, even if the party does not submit to cross-examination by the other party's advisor or the decision-maker.

- If the decision-maker does rely on an inculpatory statement, and the statement was part of the investigative report, then the decision-maker shall also consider any information offered by the party related to the inculpatory statement in the written response to the Investigative Report. The decision-maker shall decide how much weight shall be given to the inculpatory statement in reaching the determination of responsibility.

**16.8.6. Decision after the Formal Hearing.** After hearing the evidence and the closing statements, the decision-maker shall determine if Respondent is responsible for each allegation of sexual harassment as alleged in the Formal Complaint.

**16.8.6.1** In making the determination, the decision-maker shall consider the following:

- The testimony and other evidence presented at the Formal Hearing;
- If a Complainant or Respondent does not appear for the Formal Hearing or does not submit to cross-examination, the decision-maker can consider that failure to appear or submit to cross-examination as a factor in determining responsibility, but cannot use such evidence as the sole factor in determining responsibility.

**16.8.6.2** If the decision-maker determines that Respondent is responsible for one or more of the allegations, then the decision-maker shall communicate with the appropriate Conduct Code Officer to determine the appropriate sanction(s) to be imposed. This is to inform the decision-maker as to the history of how similar behaviors have been addressed and to allow for consistency in the application of sanctions. The decision-maker will not be bound by information received from the Conduct Code Officer.

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**16.8.6.3** Once sanctions are determined, if necessary, or otherwise after the decision has been made by the decision-maker, the decision-maker shall issue a written determination regarding responsibility.

**16.8.6.4** The written determination must include:

- Identification of the allegations potentially constituting Sexual Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the appropriate Code of Conduct to the facts and the parties with whom the decision-maker communicated in arriving at the sanctions;
- A statement of, and rationale, for the result as to each allegation, including a determination regarding responsibility, and disciplinary sanctions to be imposed on Respondent, and whether remedies designed to restore or preserve equal access to Education Programs and Activities will be provided to the Complainant; and
- The process and permissible bases for either the Complainant or the Respondent to appeal.

**16.8.6.5** The written decision shall be issued as soon as practicable but no later than fourteen (14) days after the end of the Formal Hearing. When the written decision is completed, the decision-maker shall deliver the written decision to the Title IX Coordinator. Within two (2) business days, the Title IX Coordinator shall provide the decision to both parties simultaneously.

**16.8.6.6** **The Decision after Formal Hearing becomes final** on the date which an appeal would no longer be considered timely, if no appeal is filed. If an appeal is filed, then the determination regarding responsibility becomes final on the date that the University provides the parties with the written determination of the Appeals decision-maker.

## **16.9 APPEALS.**

**16.9.1 Who may file an appeal.** Either party may file an appeal pursuant to the requirements of this section. Any appeal must be filed in writing with the Title IX Coordinator.

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**16.9.2 Grounds for an appeal.** Any appeal filed must be for one or more of the following grounds:

- 16.9.2.1.** Procedural irregularity that affected the outcome of the matter. The written request for appeal must describe the procedural irregularity being alleged and how the party believes the procedural irregularity impacted the outcome; OR
- 16.9.2.2.** The written request for appeal must include a description of the new evidence and how the party requesting the appeal believes the newly discovered evidence would affect the outcome; OR
- 16.9.2.3.** The Title IX Coordinator, investigator(s) or decision-maker had a conflict of interest or bias against complainants or respondents in general or against the individual Complainant or Respondent that affected the outcome of the matter. The written request for appeal must include any information that the party believes creates the conflict of interest or bias and how that conflict of interest or bias affected the outcome.

**16.9.3 Timeline for appeal.**

**16.9.3.1.** Filing Deadlines:

- An appeal from a decision to dismiss a Formal Complaint, must be filed within seven (7) days after the date of the decision.
- An appeal from a written determination by a decision-maker after a Formal Hearing must be filed within fourteen (14) days after the date of the written determination.

**16.9.3.2.** Upon receipt of a written request for appeal, the Title IX Coordinator shall notify the other party of the appeal within two (2) business days, including providing a copy of the written appeal filed by the other party.

**16.9.3.3.** The non-appealing party shall have seven (7) days from the date of notice of appeal by the Title IX Coordinator to file any written response to the written request for appeal.

**16.9.3.4.** The decision of the appeal panel shall be issued no later than fourteen (14) days after receipt of all information provided to the appeal decision-maker panel by the Title IX Coordinator.

**16.9.4** After the non-appealing party's response has been filed, or the time to file a response as set out above has passed, the Title IX Coordinator shall provide the appeal decision-maker a hard-copy, or link to an electronic copy, of this Title IX process plus:

- 16.9.4.1.** the written request for appeal, the non-appealing party's response, if any, the written determination by the decision-maker and the

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investigative report if appealing a written determination after a Formal Hearing; OR

- 16.9.4.2.** the written request for appeal, the non-appealing party's response, if any, and the written notification of the dismissal of the Formal Complaint.

This information shall be provided to the appeal decision-maker no later than two (2) business days after the response is filed or the time to file a response has passed.

- 16.9.5. Appeal Panel.** A panel made up of the Vice-President for Academic Affairs, the Vice-President for Administration and Treasurer and the Vice-President for Student Life who shall serve as the decision-makers for the appeal process. The Title IX Coordinator cannot be a decision-maker on appeal.

- 16.9.5.1.** If any member of the appeal panel believes they have a conflict of interest or bias against complainants or respondents in general or against Complainant or Respondent in the present matter which will affect their ability to be fair and impartial, then that member shall inform the other two members of the committee, who shall then select a third person, who must be able to serve without conflict or bias, to serve as a member of the appeal panel.

- 16.9.6. Standard of review on appeal.** The appeal panel shall accept the decision of the decision-maker after a written determination from a Formal Hearing or a decision of the Title IX Coordinator to dismiss a Formal Complaint unless they are definitely and firmly convinced that one of the grounds for appeal alleged by the appealing party has occurred and requires a different outcome.

- 16.9.7. Findings on appeal.** Any determination of the appeal panel as set out below shall be in writing and set out the rationale for the determination and shall be made available to the parties simultaneously.

- 16.9.7.1. If determination is to deny the Appeal.** If the appeal panel finds the decision of the decision-maker or the Title IX Coordinator is upheld, the decision of the appeal panel is final and there will be no further appeals.

- 16.9.7.2. If determination upholds any bases for appeal relating to a decision to dismiss the Formal Complaint.**

- 16.9.7.2.1. Procedural irregularity.** If the appeal panel finds that a procedural irregularity occurred that impacted the decision to dismiss the Formal Complaint, the appeal panel will issue a written finding directing that the dismissal has been set aside,

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the Formal Complaint has been re-instated and the Title IX Coordinator is to re-start the Title IX process from where the dismissal occurred.

**16.9.7.2.2. New evidence.** If the appeal panel determines that new evidence is available that was not reasonably available at the time of the written determination, then the appeal decision-maker shall reinstate the Formal Complaint and refer the matter back to the Title IX Coordinator to reconsider the new evidence in determining whether the Formal Complaint should be dismissed.

- If the Title IX Coordinator determines that the new evidence does not change the decision, the Title IX Coordinator shall issue a written decision stating that the Formal Complaint shall be dismissed and state the reasons why the new evidence did not change the decision to dismiss the Formal Complaint.
- If the Title IX Coordinator determines that the Formal Complaint should not be dismissed after reviewing the new evidence, then the Title IX Coordinator shall begin the investigative process for the Formal Complaint.

**16.9.7.2.3. Conflict of interest or bias.** If the appeal panel determines that the Title IX Coordinator had a conflict of interest or bias that impacted the decision to dismiss the Formal Complaint, the appeal panel shall notify the President of the University of the determination and that a different investigator should be appointed to review the Formal Complaint, and if not dismissed, conduct the investigation.

**16.9.7.3. If determination is to uphold any bases for appeal after a written determination of responsibility after the Formal Hearing.**

**16.9.7.3.1. Procedural irregularity.** If the appeal panel finds that a procedural irregularity occurred that affected the outcome of the written determination of responsibility after the Formal Hearing, the appeal panel shall then determine if it believes that the irregularity can be corrected.

- If so, then the appeal panel shall identify the irregularity(ies) and a new Formal Hearing shall occur.

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- If not, then the appeal panel shall issue a ruling setting aside the written determination and entering a finding in favor of the opposing party.
    - If there is more than one allegation of sexual harassment in the Formal Complaint, and the irregularity applied to evidence that was not relevant to all allegations, then only those allegations impacted by the irregularity shall be set aside and the remaining allegations shall be upheld, unless that outcome is deemed to be impacted on another ground raised in the request for appeal.

**16.9.7.3.2. New evidence.** If the appeal decision-maker determines that a) new evidence is available that was not reasonably available at the time of the written determination; and b) if the new evidence would have been considered by the decision-maker, there is a likelihood that the result would have been different, then the appeal panel shall refer the matter back to the decision-maker to re-open the Formal Hearing to consider the new evidence, along with all of the other evidence previously considered.

**16.9.7.3.3. Conflict of interest or bias.** If the appeal decision-maker determines that the decision-maker from the Formal Hearing had a conflict of interest or bias that impacted the written determination, then the appeal decision-maker shall order that a new Formal Hearing shall occur with a different decision-maker.

## **16.10 RANGE OF POSSIBLE DISCIPLINARY SANCTION AND REMEDIES**

**16.10.1.** If the Respondent is a student, then any sanction available to the Conduct Code Officer pursuant to the applicable Student Conduct Code will be available as a sanction for violation of the Title IX policy.

**16.10.2.** If the Respondent is an employee of the University, then the employee is subject to the full range of sanctions allowed under the Washburn University Policies Regulations and Procedures Manual for violation of this Title IX policy.

**16.10.2.1.** If the employee is a faculty member, then to the extent that any other or additional sanctions are possible in the Faculty Handbook, then those sanctions would also be available.

**16.10.2.2.** If the employee is a member of the bargaining unit, then sanctions as set out in the Memorandum of Agreement would be the sanctions that apply for a violation of this Title IX policy.

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**16.10.3.** If the Respondent is someone other than a student or employee of the University, 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 Supportive Measures for the Complainant and campus community.

### **16.11 TRAINING.**

**16.11.1** Any person who shall serve as the Title IX Coordinator as defined in this policy, decision-makers for both the Formal Hearing and appeals, members of the pool of advisors and any person who facilitates an informal resolution process, shall receive training on an annual basis regarding the matters listed below. This training shall occur, at the beginning of the academic year.

**16.11.2** If a person is appointed to serve in such a capacity after the annual training occurs, then that person shall receive the same training as soon as practicable after the appointment and before undertaking any duties as set out in this Title IX policy.

**16.11.3** Training for all persons listed above shall include:

- The definition of Sexual Harassment as set out in Section 16.2.17;
- The definition of Relevant Evidence as set out in Section 16.2.13;
- The scope of the University's Educational Program and Activity;
- How to conduct an investigation, a Formal Hearing and an appeal under this Title IX policy;
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias;

**16.11.4** Training for investigators shall also include training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

**16.11.5** Training for decision-maker and appeal panel and members of the pool of advisors shall also include training on any technology to be used at a Formal Hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complaint's sexual predisposition or prior sexual behavior are not relevant, and when prior inculpatory statement of party may be considered even if a party is not available for cross-examination and what other evidence must be considered along with that statement, and how the non-appearance of a party at a Formal Hearing may be considered by the decision-maker.

- 16.11.6** All materials used to provide training under this section must not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment.
- 16.11.7** All training materials will be made available for review on the Title IX Coordinator's webpage.