

Equal Opportunity, Harassment, and Nondiscrimination Policy

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Rationale for Policy

Wilkes University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Wilkes has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. Wilkes values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for those involved. The University also conducts many programs to educate the campus community regarding prevention, reporting, and issues surrounding discrimination and harassment.

Applicable Scope

Bias Incident: Bias incidents include conduct or behavior (verbal, nonverbal, or written) that is threatening, harassing, bullying, discriminatory, and is based on a person's identity or affiliation such as race, color, ethnicity, national origin, religion, gender, gender identity or expression, sex, sexual orientation, disability, age, status as a veteran, or any other characteristics prohibited by law (i.e., marital status, citizenship status, etc.).

Complainant: means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class, or retaliation for engaging in a protected activity.

Complaint (formal): means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the University investigate the allegation.

Consent: means a knowing and voluntary agreement, with affirmative and clear permission by word or action to engage in sexual activity.

Confidential Resource: means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).

Decision-maker: is the person, panel, and/or Chair who hears evidence, determines relevance, and makes the Final Determination on whether this Policy has been violated and/or assigns sanctions.

Directly Related Evidence: evidence connected to the complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot not be relied upon by the investigation report or Decision-maker.

Education Program or Activity: means locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the sexual harassment, discrimination, and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.

Final Determination: a conclusion by a preponderance of evidence that the alleged conduct did or did not violate policy.

Finding: a conclusion by a preponderance of evidence that the conduct did or did not occur as alleged.

Formal Grievance Process: means either "Process A," administered by the Title IX Coordinator, or "Process B," administered by the Title IX Committee, as defined in the University's Student Handbook.

Notice: means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

Official with Authority (OWA): means an employee of the University explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the University.

Parties: includes the Complainant(s) and Respondent(s), collectively.

Process A: means the Formal Grievance Process for Title IX and other Sexual Misconduct offenses.

Process B: means the Formal Grievance Process for other Civil Rights offenses.

Recipient: means a postsecondary education program that is a recipient of federal funding. For purposes of this Policy, it is synonymous with "University".

Relevant Evidence: evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.

Remedies: are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the University's educational program.

Respondent: means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class, or retaliation for engaging in a protected activity.

Resolution: means the result of an Informal or Formal Grievance Process.

Sanction: means a consequence imposed by the University on a Respondent who is found to have violated this Policy.

Sexual Harassment: is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence.

Title IX Coordinator: is the official designated by the University to ensure compliance with Title IX and the University's Policy on Equal Opportunity, Harassment, and Nondiscrimination and Disability compliance. References to the Coordinator throughout this Policy may also encompass a designee of the Coordinator for specific tasks, such as the Deputy Title IX Coordinators.

Title IX Team: refers to the Title IX Coordinator, Deputy Title IX Coordinators and any member of the Grievance Process Pool.

University Community: means all individuals who have a relationship with or to the University, including but not limited to: students; employees (staff and faculty) including those whose salary is paid through sources other than the University's operating funds, such as grants, research grants and external contracts; and members of the Board of Trustees, and any of their respective committees.

University Judicial Council (UJC): An adjudicating body that considers appeals of

The Title IX Coordinator oversees implementation of Wilkes University's Policy on Equal Opportunity, Harassment, and Nondiscrimination and Disability compliance (including compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973). The Title IX Coordinator has the primary responsibility for coordinating Wilkes University's efforts related to the intake; investigation; resolution as described more fully in "Process A" and "Process B"; and implementation of supportive measures to stop, remedy, and prevent discrimination, harassment, and retaliation prohibited under this Policy. Where "Title IX Coordinator" is referenced in this Policy, a Deputy Title IX Coordinator (or other appropriate designee) also has the ability to fulfill the role.

Filing a Formal Complaint/Notice

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- 1) File a complaint with, or give verbal notice to the Title IX Coordinator/Deputy Coordinators or any Official with Authority, as listed above. Such a report may be made to an Official with Authority at their designated office, by email address, or by using the telephone number as listed in the University's Directory. Furthermore, a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator.
- 2) Report online, using the reporting form posted [here](#) or employees can additionally access the University's Confidential Reporting Mechanism [here](#). Those seeking to file an anonymous report may do so through the online mechanisms listed. These reports are accepted and the University will investigate to the extent possible, however, the response may be limited by the anonymous nature of the report. Furthermore, Wilkes tries to provide supportive measures to all Complainants, which is impossible with an anonymous report.

Because reporting carries no obligation to initiate a formal response, and because the University respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the University to discuss and/or provide supportive measures.

- 3) Report to the Wilkes University Police Department:
148 South Main Street
Wilkes-Barre, PA 18766
Telephone: (570) 408-4999

A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the institution investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase "document filed/signed by the Complainant" means a document or electronic submission (such as by electronic mail or through an onatooe1 (y)-3 ()acor a2 (or)3 (e t)2 (hr)3 (9t)2 (oee1 (y)-35 (om)1 (pl)-1 (nv3 (ms)5 (e))1 (l)-1 (m)1 (m

- 2) Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do;
- 3) Try not to urinate;
- 4) If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth;
- 5) If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence);
- 6) Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

During the initial meeting between the Complainant and the Title IX Coordinator, this information will be reiterated, if timely.

Supportive Measures

Wilkes will offer and implement appropriate and reasonable supportive measures to the Parties upon notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They are offered without fee or charge to the Parties to restore or preserve access to Wilkes University's education program or activity, including measures designed to protect the safety of all parties and/or the institution's educational environment, and/or to deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator will promptly make supportive measures available to the Complainant upon receiving notice or a complaint and will work with them to ensure that their wishes are taken into account with respect to the planning and implementation of such measures. At the time that supportive measures are offered, the Title IX Coordinator will inform the Complainant, in writing, that they may file a Formal Complaint with the University either at that time or in the future, if they have not done so already.

Wilkes will maintain the privacy of the supportive measures, provided that privacy does not impair the University's ability to provide those supportive measures. Wilkes will act to ensure as minimal an academic impact on the Parties as possible. The University will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services;
- Referral to the Employee Assistance Program;
- Referral to community-based service providers such as the Victim Resource Center and Domestic Violence Service Center;
- Visa and immigration assistance;
- Student financial aid counseling;
- Education to the community or community subgroup(s);
- Altering campus housing assignment(s);
- Altering work arrangements for employees or student-employees;
- Safety planning;
- Providing campus safety escorts;
- Providing transportation accommodations;
- Implementing contact limitations (no contact orders) between the parties;
- Academic support, extensions of deadlines, or other course/program-related adjustments;
- Trespass or Persona Non Grata (PNG) orders;

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equipment, allowing a student to withdraw or take grades of incomplete, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator(s), alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the Parties.

Notwithstanding an emergency removal, when the Respondent is an employee, the University also has the discretion, through existing provisions in the Employee Policies Manual, to place the employee Respondent on administrative leave during the pendency of a Formal Grievance Process. Whether an emergency removal or an administrative leave is issued, the decision will be communicated fully to the employee.

Promptness

All allegations are acted upon promptly by the University once it has received notice or a Formal Complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the University will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in the Procedures will be delayed, the Title IX Coordinator(s) will provide written notice to the Parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

Privacy

Every effort is made by the University to preserve the privacy of any notice or complaint filed with the University. The University will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these Policies and Procedures.

The University reserves the right to determine which officials have a legitimate educational interest in being informed about incidents that fall within this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

When notice/complaint is affected by significant time delay, the University will apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

discriminatory harassment of any employee, student, visitor, or third-party. The University will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a “hostile environment.”

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, and/or physical conduct that is severe or pervasive and objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, Wilkes may also impose

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- x **Rape**—(Except Statutory Rape) The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity³
- x **Sodomy**

- and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Other Sexual Misconduct Offenses

In addition to the above offenses that fall within the scope of Title IX, the University also prohibits other sexual misconduct in the form of Hostile Environment Sexual Harassment and Sexual Exploitation.

Hostile Environment Sexual Harassment: As defined in the “Discriminatory Harassment” paragraph above.

Sexual Exploitation: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute Sexual Harassment under this Policy. Examples of Sexual Exploitation include, but are not limited to:

- 1) Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person’s consent;
- 2) Indecent exposure or inducing others to expose themselves when consent is not present;
- 3) Recording or distributing information, images or recordings of any person engaged in sexual or intimate activity in a private space without that person’s consent;
- 4) Prostituting another individual;
- 5) Knowingly exposing another individual to a sexually transmitted disease or virus without that individual’s knowledge; and
- 6) Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). Moreover, a current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the University to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar and previous patterns that may be evidenced.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

Other Civil Rights Offenses

In addition to the conduct described above, which fall either within the coverage of Title IX or “Other Sexual Misconduct” offenses³ Td()TjEMC /P (nt)2 (i)fens l

Threats/Physical Harm

Mandated Reporting

All Wilkes employees (who do not work within the Health and Wellness Services Office) are expected to promptly report actual or suspected discrimination, harassment, and/or retaliation to the Title IX Coordinator or a Deputy Title IX Coordinator.

Employees who become aware of an alleged episode of misconduct described under this Policy, are obligated to report all of the relevant facts pertaining to the incident (including names, dates, times, and locations) to the Title IX Coordinator.

Students, faculty/staff, and visitors who believe they are victims of, or witnesses to discrimination or harassment can report the incident directly to the Title IX Coordinator or a Deputy Title IX Coordinator with the information in the “Administrative Contact Information” section above; the Office of Student Affairs or to Human Resources. The Title IX Coordinator, or designated Deputy Title IX Coordinator will assist in navigating through Wilkes University’s grievance procedures and explain all resources available to the reporter.

Confidential Resources

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

On Campus:

University’s Health and Wellness Services Office: located on the first floor of Passan Hall; Phone: (570) 408-4730; 24-hour hotline: (570) 408-CHAT

Off Campus:

The Victims Resource Center: located at 360 East End Centre Wilkes-Barre, PA 18702; (570) 823-0765

The Domestic Violence Service Center: P.O. Box 2177; (570) 823-7312

The Employee Counseling Service - Family Service Association of Wyoming Valley: located at 31 West Market Street Wilkes-Barre, PA 18701-1304; (570) 823-5144

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, and/or does not want a Formal Complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator, in consultation with the Deputy Title IX Coordinator(s) (and other appropriate University administrators) has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a grievance process, usually upon completion of an appropriate individualized risk assessment.

The Title IX Coordinator's decision should be based on results of the individualized risk assessment that show a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence.

Additionally, the University may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When the University proceeds, the Complainant (and/or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Sometimes, when the Complainant cannot participate, the Advisor may serve as proxy for the Complainant throughout the process, at the request and with the consent of the Complainant.

Note that the University's ability to remedy and respond to notice may be limited if the Complainant does not want the University to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the University to honor that request, the University may offer informal resolution options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the University, and to have the incidents investigated and properly resolved through these Procedures.

Amnesty Policy

The Wilkes community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to University officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. It is in the best interests of the Wilkes community that Complainants choose to report misconduct to University officials, that witnesses come forward to share what they know, and that all individuals be forthcoming during the process.

To encourage reporting and participation in the process, Wilkes maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Students: The University therefore maintains a policy of amnesty for students who offer help to others in need and will not pursue action under the Student Handbook for minor policy violations. Wilkes may request the reporting individual attend an approved alcohol or drug education program without assessing any charges for such

