



POLICY & PROCEDURE DOCUMENT

NUMBER: 0-2040

DIVISION: General University

TITLE: **Discrimination and Harassment Policy**

DATE: April 1, 2013

Revised: July 31, 2019

Revised: August 14, 2020

Authorized: President

I. Purpose and Scope

- A. The purpose of this policy is to establish a procedure for investigating and responding to reports / complaints of discrimination involving students, employees and/or third parties in a prompt and equitable manner without placing an unreasonable burden on the complainant or University.

Note: Reports / complaints of **sexual harassment** are investigated and resolved under Policy 0.2070, Title IX - Sex and Gender-based Harassment and Discrimination Policy, including allegations of retaliation based upon such reports / complaints. Policy 0.2070 defines Sexual Harassment as: conduct on the basis of sex that occurs in the University's education program or education activity and satisfies one or more of the following:

1. An employee of the University conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct. This type of sexual harassment is also referred to as Quid Pro Quo;
2. Unwelcome conduct determined by a reasonable person to be so severe, and pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity. This type of sexual harassment is also referred to as Hostile Environment.; or
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a) (10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a) (30).

- B. Western Kentucky University is committed to providing a working and learning environment that is free from discrimination and harassment. Discrimination and harassment, and/or retaliation against anyone who makes a complaint or participates in the complaint process are prohibited and shall not be tolerated.

- C. The University specifically reserves the right to modify and/or amend any or all of the procedure(s) outlined herein at any time as circumstances may require. As may be applicable, the affected parties will be notified in the event circumstances arise which warrant procedural amendments.
- D. Conduct prohibited under this policy does not include verbal expressions or written material that is relevant and related to course subject matter or curriculum, and this policy shall not abridge academic freedom or the University's educational mission.

This policy does not supersede or replace any grievance or complaint procedures contained in the Faculty Handbook.

*This policy **does not** supersede 0-2070, Sex and Gender-based Harassment, Discrimination, and Retaliation; the two are mutually exclusive.*

II. Definitions:

- A. Discrimination: an action or behavior that results in negative or different treatment of an individual based upon race, color, ethnic origin, national origin, creed, religion, political belief, sexual orientation, gender identity/expression, marital status, age, uniform service, veteran status, pregnancy, childbirth or related medical conditions, or physical or mental disability.
- B. Harassment: any physical, behavioral or verbal abuse of a person based upon race, color, ethnic origin, national origin, creed, religion, political belief, sexual orientation, gender identity/expression, marital status, age, uniform service, veteran status, pregnancy, childbirth or related medical conditions, or physical or mental disability, where:
 - 1. Tolerance of or participation in the offensive conduct explicitly or implicitly becomes a condition of employment or participation in a university course, program or activity; or
 - 2. The conduct is sufficiently severe, pervasive or persistent to interfere with an individual's work, academic or program participation; or
 - 3. The conduct creates an environment that a reasonable person would consider intimidating, hostile, or offensive.
- C. Hostile Work Environment: Actions or behavior which discriminate against a member of a protected classification (i.e., sex, race, color, ethnic origin, national origin, creed, religion, political belief, sexual orientation, gender identity/expression, marital status, age, uniform service, veteran status, pregnancy, childbirth or related medical conditions, or physical or mental disability), and are severe and pervasive to the extent that the actions or behavior interfere with an employee's ability to perform his or her job or interfere with a student's access to educational opportunities.

- D. Retaliation: Retaliation occurs when an adverse action is taken against an individual because he or she reported a violation of this policy, filed a formal complaint or participated in an investigation of a discrimination report.
- E. Members of the University Community: Members of the University Community are its faculty, staff, students, and volunteers, as well as customers and visitors of the University.

III. Procedure

- A. A person experiencing discrimination or harassment but who does **not** desire to make a formal report may consider the following alternatives:
 - Contacting the [WKU University Ombuds Officer for information and guidance](#); and/or,
 - Clearly informing the alleged offender / harasser that the behavior is offensive, unwelcome and will not be tolerated.
- B. Formal Report / Procedure: Emphasis shall be on getting at the facts, assuring those facts are reported accurately to the proper authority, and providing a decision based on verifiable information.
 - 1. Stage I / Initial Report
 - a) A complaint of discrimination or harassment should be submitted within thirty (30) calendar days of the most recently alleged discriminatory, harassing or retaliatory action to the Equal Employment Opportunity/Affirmative Action/University ADA Services (EEO) Director.
 - b) Any individual who believes he/she may have experienced or observed conduct which is in violation of this policy should report this information immediately to the EEO Director.
 - c) Any **dean, director, faculty member, department head, manager, supervisor, or other individual with supervisory or administrative responsibility** who learns of, or receives, information that conduct in violation of this policy has occurred (or is occurring) must immediately report that information to the EEO Director.
 - d) The EEO Director is Mr. Joshua Hayes; his **contact information** is:

Wetherby Administration Building, Room G33
Western Kentucky University
1906 College Heights Blvd. #11009
Bowling Green, KY 42101-1009
Phone: 270-745-5121
Fax: 270-745-3199
E-mail: joshua.hayes@wku.edu

- e) Upon receipt of information, the EEO Director will either initiate stage 2, or if the report / complaint is an allegation of student to student violation of the policy, the EEO Director will refer the report / complaint to the Vice President for Student Affairs, who will initiate stage 2.
- f) The EEO Director shall also notify the Title IX Coordinator of any reports or complaints received.

2. Stage 2 / Investigation

- a) Investigator: Responsibility for investigation of discrimination or harassment complaints:
 - 1) Student to student violations: A report or complaint brought forward by a student where the accused is a student shall be investigated by the Vice President for Student Affairs or his/her designee.
 - 2) Non-student to student violations: Reports or complaints brought forward by a student where the accused is an employee or non-university person (ex: visitor) shall be investigated by the EEO.
 - 3) All other violations: Reports or complaints brought forward by a University employee or non-University person (ex: visitor), regardless of the status of the person accused, shall be investigated by the EEO.

The President has the authority to appoint an alternate investigator as circumstances require and at his/her sole discretion.

- b) Interviews: Upon receipt of the initial report, the investigator will arrange to interview the complainant, respondent and any witnesses identified by the parties as being necessary to the investigation.
- c) Retaliation: All parties involved in the investigation will be informed that retaliation is prohibited against anyone making or participating in the investigation of a complaint. If retaliation is found to have occurred, that may be grounds for immediate termination of employment or expulsion from the university even in the absence of a finding of discrimination.
- d) Determination: In determining whether alleged conduct constitutes a violation of this policy, the record as a whole will be considered, as well as the totality of the circumstances. This means that the nature of the alleged conduct and the context in which the alleged conduct occurred will be examined and evaluated to determine whether the totality of the evidence creates a violation of University policy.
- e) Time Frame: The investigator shall make a good faith effort to complete the investigation within sixty (60) days of the complaint being filed with the investigator. However, the investigation period may be extended if the investigator believes it necessary for a full and complete investigation.
- f) Standard: The investigator will review the information, using a *preponderance of the*

evidence standard (i.e. more likely than not) to determine whether a violation of the policy has occurred.

3. Stage 3 / Findings and Resolution

a) Finding of No Violation: If the investigator finds that a violation of this policy has not occurred, the investigator will notify the complainant and the alleged offender of the finding in writing. Other parties will be notified as follows:

- 1) Student to student-violation: If the complainant and accused are students, the investigator may also inform other administrators as appropriate.
- 2) Employee to student or employee violation: If the complainant is a student or university employee and the accused is a university employee, a copy of the finding will be provided to the alleged offender's department/unit head and immediate supervisor, and the Vice Provost (if the accused is a faculty member) or the Director of Human Resources (if the accused is a staff member). The investigator may also inform other administrators as appropriate.
- 3) Non-University person to student / employee: If the complainant is a student or University employee and the accused is a non-University person, a copy of the report will be provided to the Chief of the WKU Police Department. The investigator may also inform other administrators as appropriate.

b) Finding of Violation:

- 1) Student to student violation: If the investigator determines that a violation has occurred, the investigator will notify the complainant and accused, the Office of Judicial Affairs and other administrators, as the investigator deems appropriate.

The Office of Judicial Affairs shall determine an appropriate sanction in accordance with the Student Handbook.

- 2) All other violations: If the investigator determines that a violation has occurred, the investigator will notify the complainant and accused, and:
 - i. If the violator is a student, the Office of Judicial Affairs, which shall determine the appropriate sanction in accordance with the Student Handbook.
 - ii. If the violator is an employee, the offending party's department/unit head and immediate supervisor, and the Vice Provost (if the violator is a faculty member) or the Director of Human Resources (if the violator is a staff member). The EEO may also inform other administrators as appropriate.

c) Corrective Action for Employee Violation:

- 1) The offending party's supervisor shall consider the severity, persistence and pervasiveness of the conduct in determining the corrective action to be taken.
- 2) The department/unit head and supervisor shall consult with his/her successive levels of administration to determine what action, if any, is to be taken against the offending party in accordance with University disciplinary policies/procedures. The determination shall occur and be implemented as soon as possible. The EEO and the Director of Human Resources shall be informed of the disciplinary action.
- 3) In addition to the procedures outlined herein, discrimination and harassment complaints may be filed with the U.S. Equal Employment Opportunity Commission or U.S. Department of Education, Office for Civil Rights. Any complaint filed under the University's policy shall be processed even if the complainant also files a complaint or suit with an outside agency, U.S. Equal Employment Opportunity Commission, or U.S. Department of Education, Office for Civil Rights. Contact information for these agencies: the Office for Civil Rights, U.S. Department of Education, The Wanamaker Building, Suite 515, 100 Penn Square East, Philadelphia, PA 19107, (215) 656-8548; the Kentucky Commission on Human Rights, 832 Capital Plaza, 500 Metro Street, Frankfort, Kentucky, 60601, (502) 595-4024 or (800) 292-5566; or the Equal Employment Opportunity Commission, 600 Martin Luther King, Jr. Place, Suite 269, Louisville, Kentucky 40202, (502) 582-5851.

IV. Related Policies

See also:

[0.2070 Sex and Gender-based Harassment, Discrimination and Retaliation](#)

[1.1013 Consensual Relations Between Faculty and Students](#)

[4.8000 Standards of Conduct](#)

[4.8051 Workplace Violence](#)

[6.1010 Student ADA Grievance Procedure under Section 504 and Title II](#)

[1.700/4.2700 Religious and Cultural Observations](#)

Note:

July 31, 2019: Policy revised based upon passage of KRS 344.040(1)(c) effective June 27, 2019.

August 14, 2020: This Policy and 0.2070 revised based upon Department of Education's amendments to the regulations implementing Title IX issued May 19, 2020, and effective August 14, 2020.