

Kentucky Wesleyan College  
Title IX Sexual Misconduct & Discrimination  
Policy Manual

**Approval:** Office of the President

**Policy Type:** College

**Policy Owner:** Office of the President

**Responsible Office:** Title IX Coordinator

**Approval Date:** August 2020

**Next Review:** August 2021

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## 1. Glossary

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *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 filed/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 recipient investigate the allegation.
- *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).
- *Day* means a business day when Kentucky Wesleyan College is in normal operation.
- *Education program or activity* means locations, events, or circumstances where Kentucky Wesleyan College exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by Kentucky Wesleyan College.
- *Final Determination*: A conclusion by the preponderance of evidence that the alleged conduct occurred and whether it did or did not violate policy.
- *Finding*: A conclusion by the preponderance of evidence that the conduct did or did not occur as alleged.
- *Formal Grievance Process* means “Process A,” a method of formal resolution designated by the recipient to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45.
- *Grievance Process Pool* includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all these roles (though not at the same time or with respect to the same case).
- *Hearing Decision-maker or Panel* refers to those who have decision-making and sanctioning authority within the Recipient’s Formal Grievance process.

- *Investigator* means the person or persons charged by Kentucky Wesleyan College with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of Kentucky Wesleyan College who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator or their supervisor.<sup>1</sup>
- *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 Kentucky Wesleyan College explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the Recipient.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Process A* means the Formal Grievance Process detailed in the Title IX Procedures Manual.
- *Process B* means the informal alternative resolution procedures detailed in the Title IX Procedures Manual.
- *Recipient* means a postsecondary education program that is a recipient of federal funding.
- *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 Recipient'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 Recipient on a Respondent who is found to have violated this policy.

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<sup>1</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.
- *Title IX Coordinator* is at least one official designated by Kentucky Wesleyan College to ensure compliance with Title IX and Kentucky Wesleyan College's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- *Title IX Team* refers to the Title IX Coordinator, Title IX Deputy Coordinator(s), and any member of the Grievance Process Pool.

## **2. Rationale for Policy**

Kentucky Wesleyan College values the unique contributions of all members of our campus community. As part of our mission to prepare future leaders intellectually, spiritually, and physically, we strive to provide an atmosphere that encourages and challenges all members of the Kentucky Wesleyan College campus community to exhibit an understanding and appreciation of cultural and human differences. We are committed to being a community that reflects the diversity of our larger society. We expect all members of our institution to actively create and maintain an inclusive learning and living environment that embraces diversity in all forms, including race, ethnicity, gender, gender identity, socio-economic status, national origin, sexual orientation, disability, religion, and thought.

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, Kentucky Wesleyan College 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. Kentucky Wesleyan College 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 all those involved.

## **3. Applicable Scope**

The core purpose of this policy is the prohibition of all forms of discrimination based on sex. Sometimes, discrimination involves exclusion from activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation based on sex of this anti-discrimination policy is reported, the allegations are subject to resolution using Kentucky Wesleyan College's "Process A" or "Process B," as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the Kentucky Wesleyan College community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Kentucky Wesleyan College community. This community includes, but is not limited

to, students,<sup>2</sup> student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

#### **4. Title IX Coordinator**

The Title IX Coordinator oversees implementation of the Recipient's Affirmative Action and Equal Opportunity plan and the Recipient's policy on harassment, and nondiscrimination based on sex. The Title IX Coordinator has the primary responsibility for coordinating Kentucky Wesleyan College's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation based on sex and prohibited under this policy.

##### ***Title IX Coordinator***

Deborah Russell

Howard Greenwell Library, Director's Office

3000 Frederica Street, Owensboro, KY 42301

(270) 852-3266

Email: [drussell@kwc.edu](mailto:drussell@kwc.edu)

Web: <https://kwc.edu/campus-life/sexual-harassmentassault/>

#### **5. Independence and Conflict-of-Interest**

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Office of the Kentucky Wesleyan College President who will decide if a conflict or bias exists.

Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator who will decide if a conflict or bias exists.

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Office of the Kentucky Wesleyan College President. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.

##### ***Office of the President***

Dr. Thomas Mitzel

3000 Frederica St.

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<sup>2</sup> For the purpose of this policy, Kentucky Wesleyan College defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with Kentucky Wesleyan College.

Owensboro, KY 42301  
Admin. 102A  
(270) 852-3104  
[Tom.Mitzel@kwc.edu](mailto:Tom.Mitzel@kwc.edu)

## **6. Administrative Contact Information**

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

### ***Title IX Coordinator***

Deborah Russell  
Howard Greenwell Library, Director's Office  
3000 Frederica Street, Owensboro, KY 42301  
(270) 852-3266  
Email: [drussell@kwc.edu](mailto:drussell@kwc.edu)  
Web: <https://kwc.edu/campus-life/sexual-harassmentassault/>

### ***Title IX Deputy***

Jenna Brashear  
Director of Institutional Research  
3000 Frederica Street, Owensboro, KY 42301  
Admin. 206  
(270) 852-3291  
Email: [jbrashear@kwc.edu](mailto:jbrashear@kwc.edu)

### ***Office of the President***

Dr. Thomas Mitzel  
3000 Frederica St.  
Owensboro, KY 42301  
Admin. 102A  
(270) 852-3104  
[Tom.Mitzel@kwc.edu](mailto:Tom.Mitzel@kwc.edu)

Inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

Or the regional office serving Kentucky

Office for Civil Rights, Philadelphia Office  
U.S. Department of Education  
The Wanamaker Building  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323  
Telephone: (215) 656-8541  
Fax: (215) 656-8605  
Email: [OCR.Philadelphia@ed.gov](mailto:OCR.Philadelphia@ed.gov)

Kentucky State Police  
8298 Keach Dr.  
Henderson, KY 42420  
(270) 826-3312

Owensboro Police Department  
222 East Nineth Street  
Owensboro, KY 42303  
(270) 687-8888

For complaints involving employees: [Equal Employment Opportunity Commission](#) (EEOC)

EEOC Louisville Area Office  
600 Dr. Martin Luther King Jr Pl, Suite 268  
Louisville, KY 40202  
800-669-4000  
Director Alan Anderson

### **7. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

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 or Title IX Deputy. Such 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 or any other official listed.

***Title IX Coordinator***

Deborah Russell  
Howard Greenwell Library, Director's Office  
3000 Frederica Street, Owensboro, KY 42301  
(270) 852-3266



Email: [drussell@kwc.edu](mailto:drussell@kwc.edu)

Web: <https://kwc.edu/campus-life/sexual-harassmentassault/>

***Title IX Deputy***

Jenna Brashear

Director of Institutional Research

3000 Frederica Street, Owensboro, KY 42301

Admin. 206

(270) 852-3291

Email: [jbrashear@kwc.edu](mailto:jbrashear@kwc.edu)

[2] Report online, using the reporting form posted at <https://kwc.edu/title-ix-complaint-submission/>

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 Kentucky Wesleyan College 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 by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by Kentucky Wesleyan College) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

Anonymous reports are accepted but can give rise to a need to investigate. Kentucky Wesleyan College 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 as Kentucky Wesleyan College 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 Kentucky Wesleyan College to discuss and/or provide supportive measures.

### **8. Supportive Measures**

Kentucky Wesleyan College 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, as reasonably available, and without fee or charge to the parties to restore or preserve access to Kentucky Wesleyan College’s education program or activity, including measures designed to protect the safety of all parties or the Kentucky Wesleyan College educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, Kentucky Wesleyan College will inform the Complainant, in writing, that they may file a formal complaint either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

Kentucky Wesleyan College will maintain the privacy of the supportive measures, provided that privacy does not impair the ability to provide the supportive measures. Kentucky Wesleyan College will act to ensure as minimal an academic impact on the parties as possible, 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 available to employees on the life insurance plan. More information may be access on the PantherNet.  
<https://intranet.kwc.edu/uploads/sites/3/Employee-Assistance-Program-flyer.pdf>
- Referral to community-based service providers
- Visa and immigration assistance to students
- 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
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

### **9. Emergency Removal**

Kentucky Wesleyan College can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other

individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the Threat Assessment Group (TAG) using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student, employee, or two (2) representatives from a student organization will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within 48 hours objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

Kentucky Wesleyan College will implement the least restrictive emergency actions possible considering the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, 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, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties. Telework may be pursued to ensure as minimal an employment impact as possible on employed parties at the joint discretion of the Title IX Coordinator and the supervisor of the employee.

#### **10. Promptness**

All allegations are acted upon promptly by Kentucky Wesleyan College 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 Kentucky Wesleyan College will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in Kentucky Wesleyan College procedures will be delayed, Kentucky Wesleyan College 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.

### **11. Privacy**

Every effort is made by Kentucky Wesleyan College to preserve the privacy of reports. Kentucky Wesleyan College 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 sex 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.

Kentucky Wesleyan College reserves the right to designate which College 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).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: President, Vice President of Student Affairs for complaints involving students, Director of Human Resources for complaints involving employees, and Compliance Office, Recipient Police, and the Threat Assessment Group. Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

Kentucky Wesleyan College may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

### **12. Jurisdiction of the Recipient**

This policy applies to the education program and activities of Kentucky Wesleyan College, that take place on the campus or on property owned or controlled by the College, at College sponsored events, or in buildings owned or controlled by College recognized student organizations. The Respondent must be a member of the Kentucky Wesleyan College community for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Kentucky Wesleyan College's educational program. The recipient may also

extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial Kentucky Wesleyan College interest.

Regardless of where the conduct occurred, the Recipient will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial Kentucky Wesleyan College interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual.
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of Kentucky Wesleyan College.

If the Respondent is unknown or is not a member of the Kentucky Wesleyan College community, the Title IX Office will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of Kentucky Wesleyan College's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Office or New Beginnings Sexual Assault Support Services, 1-800-226-7273.

In addition, Kentucky Wesleyan College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from College property and/or events.

All vendors serving Kentucky Wesleyan College through third-party contracts are subject to the policies and procedures of their employers [or to these policies and procedures to which their employer has agreed to be bound by their contracts].

When the Respondent is enrolled in or employed by another institution, the Title IX Office can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Office may be able to advocate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to Kentucky Wesleyan College where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

**13. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the Kentucky Wesleyan College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

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

**14. Online Harassment and Misconduct**

The policies of Kentucky Wesleyan College are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the College's education program and activities or use College networks, technology, or equipment.

While Kentucky Wesleyan College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to Kentucky Wesleyan College, it will engage in a variety of means to address and mitigate the effects under the Social Media Policy available at <https://intranet.kwc.edu/uploads/sites/3/Social-Media-Policy-Update-2018.pdf>.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Kentucky Wesleyan College community.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the Recipient only when such speech is made in an employee's official or work-related capacity.

**15. Policy on Nondiscrimination**

Kentucky Wesleyan College adheres to all federal and state civil rights laws and regulations prohibiting discrimination in private institutions of higher education.

Kentucky Wesleyan College does not discriminate against any employee, applicant for employment, student, or applicant for admission based on:

- Race,
- Religion,
- Color,
- Sex,
- Pregnancy,
- Ethnicity,
- National origin (including ancestry),
- Physical or mental disability (including perceived disability),
- Age,
- Sexual orientation,
- Gender identity,
- Veteran or military status,
- Predisposing genetic characteristics,
- or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the Kentucky Wesleyan College community whose acts deny, deprive, or limit the educational or employment or residential and/or social access, benefits, and/or opportunities of any member of the Kentucky Wesleyan College community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the Kentucky Wesleyan College policy on nondiscrimination.

When brought to the attention of Kentucky Wesleyan College, any such discrimination will be promptly and fairly addressed and remedied by the College according to the grievance process described below.

#### **16. Policy on Discriminatory Harassment**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. Kentucky Wesleyan College's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under Kentucky Wesleyan College policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of Kentucky Wesleyan College policy, though supportive measures will be offered to those impacted.

### **a. Discriminatory Harassment**

Discriminatory harassment constitutes a form of discrimination that is prohibited by Kentucky Wesleyan College policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community based on actual or perceived membership in a class protected by policy or law.

Kentucky Wesleyan College does not tolerate discriminatory harassment of any employee, student, visitor, or guest. Kentucky Wesleyan College 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.<sup>3</sup> This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive **and** objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, Kentucky Wesleyan College may also impose sanctions on the Respondent through application of the grievance process below.

Kentucky Wesleyan College reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under Kentucky Wesleyan College policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternate Resolution, and/or other informal resolution mechanisms.

For assistance with Alternate Resolution and other informal resolution techniques and approaches, employees should contact the Director of Human Resources, and students should contact the Dean of Students.

### **b. Sexual Harassment**

The Department of Education’s Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the Commonwealth of Kentucky regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Kentucky Wesleyan College has adopted the following definition of Sexual Harassment to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

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<sup>3</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: [Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students At Educational Recipients Investigative Guidance.](#)



Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

- 1) Quid Pro Quo:
  - a. an employee of Kentucky Wesleyan College,
  - b. conditions the provision of an aid, benefit, or service of the recipient,
  - c. on an individual's participation in unwelcome sexual conduct; and/or
  
- 2) Sexual Harassment:
  - a. unwelcome conduct,
  - b. determined by a reasonable person,
  - c. to be so severe, and
  - d. pervasive, and,
  - e. objectively offensive,
  - f. that it effectively denies a person equal access to the College's education program or activity.<sup>4</sup>
  
- 3) Sexual assault, defined as:
  - a) Sex Offenses, Forcible:
    - i) Any sexual act directed against another person,
    - ii) without the consent of the Complainant,
    - iii) including instances in which the Complainant is incapable of giving consent.<sup>5</sup>
  - b) Forcible Rape:
    - i) Penetration,
    - ii) no matter how slight,
    - iii) of the vagina or anus with any body part or object, or
    - iv) oral penetration by a sex organ of another person,
    - v) without the consent of the Complainant.
  - c) Forcible Sodomy:
    - i) Oral or anal sexual intercourse with another person,
    - ii) forcibly,
    - iii) and/or against that person's will (non-consensually), or

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<sup>4</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

<sup>5</sup> This definition set is not taken from SRS/NIBRS verbatim. ATIXA has substituted Complainant for "victim," has removed references to his/her throughout, has defined "private body parts," has removed the confusing and unnecessary term "unlawfully," and has inserted language clarifying that the Recipient interprets "against the person's will" to mean "non-consensually." These are liberties ATIXA thinks are important to take with respect to the federal definitions, but users should consult legal counsel before adopting them.

- iv) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age<sup>6</sup> or because of temporary or permanent mental or physical incapacity.
  - d) Sexual Assault with an Object:
    - i) The use of an object or instrument to penetrate,
    - ii) however slightly,
    - iii) the genital or anal opening of the body of another person,
    - iv) forcibly,
    - v) and/or against that person's will (non-consensually),
    - vi) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - e) Forcible Fondling:
    - i) The touching of the private body parts of another person (buttocks, groin, breasts),
    - ii) for the purpose of sexual gratification,
    - iii) forcibly,
    - iv) and/or against that person's will (non-consensually),
    - v) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - f) Sex Offenses, Non-forcible:
    - i) Incest:
      - 1) Non-forcible sexual intercourse,
      - 2) between persons who are related to each other,
      - 3) within the degrees wherein marriage is prohibited by the Commonwealth of Kentucky law.
    - ii) Statutory Rape:
      - 1) Non-forcible sexual intercourse,
      - 2) with a person who is under the statutory age of consent of 16 years of age, or under 18 if the other participant is more than 10 years older.
- 4) Dating Violence, defined as:
- a. violence,
  - b. on the basis of sex,
  - c. committed by a person,
  - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
    - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction

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<sup>6</sup> Per state law.

between the persons involved in the relationship. For the purposes of this definition—

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

5) Domestic Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the Commonwealth of Kentucky or
- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the Commonwealth of Kentucky.

\*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6) Stalking, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances 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.

### c. Force, Coercion, Forcible Compulsion, Consent, and Incapacitation

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Forcible Compulsion:** Forcible compulsion includes physical force or the threat of physical force, expressed or implied, which places a person in reasonable fear of immediate death or physical injury or kidnap of self or another person. A person is not required to fight back. Placing a person in a continual state of fear and/or subjecting that person to an environment of emotional, verbal, or physical duress is sufficient to constitute forcible compulsion.

**Consent is:**

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the 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, if 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). 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 Kentucky Wesleyan College 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, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>7</sup> or other forms of kink, non-consent may be shown by using a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Kentucky Wesleyan College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or are 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, or 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.

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<sup>7</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

#### **d. Other Civil Rights Offenses**

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, Kentucky Wesleyan College additionally prohibits the following offenses as forms of discrimination outside of Title IX when the act is based upon the Complainant's actual or perceived membership in a protected class.

- Sexual Exploitation, defined as: 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:
  - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
  - Invasion of sexual privacy.
  - Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography. In the Commonwealth of Kentucky, consent to creating a sexually related visual image does not, by itself, constitute consent to the distribution of the visual image. (KRS 531.120 (5))
  - Prostituting another person
  - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection
  - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
  - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
  - Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
  - Knowingly soliciting a minor for sexual activity
  - Engaging in sex trafficking
  - Creation, possession, or dissemination of child pornography
- Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person.
- Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities.

- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another.
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Kentucky Wesleyan College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity in accordance with the Student Code of Conduct.
- Bullying, defined as:
  - Repeated and/or severe
  - Aggressive behavior
  - Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally
  - That is not speech or conduct otherwise protected by the First Amendment.

Violation of any other Kentucky Wesleyan College policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

### **17. Interpersonal Relationships**

In accordance with Kentucky Wesleyan College Interpersonal Relationship policy, any romantic and/or sexual relationship between an employee and a Wesleyan student is prohibited. Relationships in which a differential of power exists between parties increase the risk of exploitation, favoritism, bias, and conflicts of interest. Possible violations of this policy will be investigated by the Title IX Coordinator and/or Deputy Coordinator. If any intimate relationship negatively affects job performance or behavior, the College may take disciplinary action, up to and including termination.

In relationships with students, College employees must conduct themselves with the highest level of professionalism and standards of conduct. In all interactions with students, employees must exercise discretion, honor, integrity, and professional responsibility.

If a newly hired employee is already in a relationship with a current Kentucky Wesleyan student at the time of hire, the new employee must immediately disclose the relationship to the Cabinet Official to whom his/her position reports. This policy does not include platonic relationships, or couples married to each other.

**18. Retaliation**

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Kentucky Wesleyan College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for Kentucky Wesleyan College or any member of the College community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, 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 policy and procedure.

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 a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

**19. Mandated Reporting**

All Kentucky Wesleyan College employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.



The following sections describe the reporting options at Kentucky Wesleyan College for a Complainant or third-party (including parents/guardians when appropriate):

**a. Confidential Resources**

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

- the Counseling Services Office, Director of Counseling Services
- the Student Health Services Office, Director of Student Health Services
- Off-campus (non-employee) Resources:
  - Licensed professional counselors and other medical providers
  - Local rape crisis counselors
  - Domestic violence resources
  - Sexual assault resources
  - Local or state assistance agencies
  - Clergy/Chaplains
  - Attorneys

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.

On campus, counseling services are available to help free of charge. The Director of Counseling may be consulted on an emergency basis 24/7 by calling 270-852-3183. The Director of Student Health Services may be consulted during business hours by calling 270-852-3288. Off campus, New Beginnings Sexual Assault Services are available 24/7 by calling 270-926-7273. Counseling Associates offers counseling services for a fee and will accept most insurances. They can be reached during business hours by calling 270-686-7999. The National Sexual Assault Hotline (800-656-4673) and National Domestic Violence Hotline (800-799-7233 or Text LOVEIS to 1-866-331-9475) are 24/7 services. These numbers are listed on the back of all student, faculty, and staff ID cards.

Kentucky Wesleyan College employees who are confidential will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client or patient.

**b. Anonymous Notice to Mandated Reporters**

At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves. When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator.

Anonymous notice will be investigated by Kentucky Wesleyan College to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits Kentucky Wesleyan College's ability to investigate, respond, and provide remedies, depending on what information is shared.

### **c. Mandated Reporters and Formal Notice/Complaints**

All employees of Kentucky Wesleyan College (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or seek a specific response from Kentucky Wesleyan College.

Supportive measures may be offered as the result of such disclosures without formal Kentucky Wesleyan College action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of Kentucky Wesleyan College policy and can be subject to disciplinary action for failure to comply.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though Kentucky Wesleyan College is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

## **20. 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, 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 has ultimate discretion over whether Kentucky Wesleyan College 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 upon completion of an appropriate violence risk assessment as determined by Threat Assessment Group.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires Kentucky Wesleyan College 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. Recipients 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 Kentucky Wesleyan College'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 Kentucky Wesleyan College proceeds, the Complainant (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. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

Note that Kentucky Wesleyan College's ability to remedy and respond to notice may be limited if the Complainant does not want the College 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 Kentucky Wesleyan College's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow Kentucky Wesleyan College to honor that request, the College will offer informal resolution options (see below), 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 Kentucky Wesleyan College, and to have the incidents investigated and properly resolved through these procedures.

**21. Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Kentucky Wesleyan College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

Kentucky Wesleyan College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

**22. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, student witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under the Student Code of Conduct. Employees can be subject to discipline under the Employee Handbook.

**23. Amnesty for Complainants and Witnesses**

The Kentucky Wesleyan College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to Kentucky Wesleyan College 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. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the Kentucky Wesleyan College community that Complainants choose to report misconduct to College officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Kentucky Wesleyan College 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.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

**Students:** Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves. Kentucky Wesleyan College maintains a policy of amnesty for students who offer help to others in need and encourages all to assist anyone who may have experienced sexual misbehavior to seek help. While policy violations cannot be overlooked, Kentucky Wesleyan College may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

**Employees:** Sometimes, employees are hesitant to report harassment or discrimination they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to Kentucky Wesleyan College officials.

Kentucky Wesleyan College may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

#### **24. Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson.
- b) Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property.
- c) VAWA<sup>8</sup>-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to [campus law enforcement] regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: student affairs/student conduct staff, campus security, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

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