

Sexual Misconduct Policy

I. INTRODUCTION AND SCOPE

The University of Pikeville is committed to creating and maintaining a community where all persons who participate in University programs and activities can work and learn together in an atmosphere free of sexual misconduct. Therefore, the University will not tolerate sexual misconduct as defined in this policy. Such acts are prohibited by University policy, as well as state and federal law. Persons whom the University determines more likely than not have violated this policy are subject to penalties up to and including dismissal or separation from the University, regardless of whether they are also facing criminal or civil charges before a government agency or court of law.

This policy applies to all University students, faculty and staff, as well as third parties who interact with the University community, and all University-sponsored programs, events and activities, regardless of where the alleged sexual misconduct occurs. The University will respond promptly and effectively to reports of sexual misconduct, and will take appropriate action to prevent, to correct and, when appropriate, to discipline behavior that violates this policy on sexual misconduct. The University also will take steps in the event of sexual misconduct to remedy its discriminatory effects on the survivor and others, if appropriate.

Gender-based discrimination or harassment that is not covered by this policy should be addressed through the University's other policies on equal opportunity, harassment and discrimination.

Nothing contained in this policy shall be construed to supplant or modify existing laws of the Commonwealth of Kentucky and the United States. This policy shall not be used to remedy acts which are crimes under the laws of the Commonwealth of Kentucky or the United States.

II. DEFINING SEXUAL MISCONDUCT

A. UPIKE Policy Definitions

University policy prohibits gender discrimination. Sexual misconduct is a form of gender discrimination. Different forms of sexual misconduct are explained in this policy. The determination of what constitutes sexual misconduct will vary with the facts and circumstances of each case. For acts of gender discrimination that are not covered by one of the forms of sexual misconduct addressed in this policy, please see the University's other policies on discrimination.

Sexual harassment can take one of two forms. The first form involves unwelcome verbal, electronic, physical and/or visual conduct based on sex, which both (1) unreasonably interferes with a person's work or educational performance, and (2) creates an environment that both a reasonable person and the specific person being harassed would find intimidating, hostile or offensive. This form may come from a supervisor, an educator or from any other person at the University. The second form involves either (1) submission to unwelcome advances of a supervisor or educator as an express or implied condition of receiving work or educational benefits, or (2) a tangible work or educational detriment resulting from a person's failure or refusal to submit

to sexual demands of a supervisor or educator. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single or isolated incident of sexual violence may create a hostile environment. Examples of sexual harassment include (but are not limited to):

- Unwelcome sexual flirtation or advances.
- Offering employment, promotions, grades or other benefits in exchange for sexual favors.
- Making or threatening reprisals for refusing sexual advances.
- Unwelcome visual and/or electronic conduct such as leering; making sexual gestures; displaying sexually suggestive objects or pictures, cartoons or posters; and suggestive or obscene letters, notes or invitations.
- Unwelcome verbal or electronic conduct such as derogatory comments; epithets; slurs; sexual innuendo; sexual jokes; graphic verbal commentaries about a person's body; and sexually degrading words used to describe a person.
- Unwelcome physical conduct such as unwarranted, suggestive or offensive touching; and impeding or blocking movement.

Sexual Assault refers to any sexual act directed against another person, forcibly and/or against the person's will; or not forcibly or against the person's will where the survivor is incapable of giving consent, as well as incest or statutory rape. Examples of sexual assault for purposes of this policy include but are not limited to:

- Intentional touching of another person's intimate parts without that person's consent;
- Other intentional sexual contact with another person without that person's consent;
- Coercing, forcing or attempting to coerce or force a person to touch another person's intimate parts without that person's consent; or
- Rape, which is penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person's consent.

Domestic Violence includes felony or misdemeanor crimes of violence committed by:

- A current or former spouse or intimate partner of the survivor;
- A person with whom the survivor shares a child in common;

- A person who is or was residing in the same household as the survivor; or
- Any person against someone who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Dating Violence refers to violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the survivor.

Stalking occurs when someone engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

Sexual exploitation occurs when someone takes sexual advantage of another person for the benefit of anyone other than that person without that person's consent. Examples of behavior that could rise to the level of sexual exploitation for purposes of this policy include but are not necessarily limited to:

- Prostituting another person;
- Recording images (e.g., video, photographs) or audio of another person's sexual activity, intimate body parts or nakedness without that person's consent;
- Distributing images (e.g., video, photographs) or audio of another person's sexual activity, intimate body parts or nakedness if the person distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and
- Viewing another person's sexual activity, intimate body parts or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, and for the purpose of arousing or gratifying sexual desire.

Unwelcome conduct does not have to include intent to harm, be directed at a specific target or involve repeated incidents, and can involve persons of the same or opposite sex. Participation in conduct or the failure to complain does not always mean the conduct was welcome. The fact that a person has welcomed some conduct does not necessarily mean a person welcomed other conduct. Similarly, the fact that a person may have invited, requested or otherwise consented to conduct on one occasion does not necessarily mean the conduct is welcome on a later occasion.

Consent as used in this policy is defined as follows:

Consent is *informed*. Consent is an affirmative, knowing, unambiguous, and conscious decision by each participant to engage in mutually agreed-upon sexual activity.

Consent is *voluntary*. It must be given without coercion, force, threats, or intimidation. Consent means positive cooperation in the act or expression of intent

to engage in the act pursuant to an exercise of free will. Even though consent does not necessarily need to be verbal, relying purely on non-verbal communication can lead to misunderstandings. So, a spoken agreement is the most clearly indicated form of consent. It may not, in any way, be inferred from silence, passivity, lack of resistance or lack of an active response alone. Assuming that consent was given by the absence of a “no” is wrong.

Consent is *revocable*. Consent to some form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be mutual consent to engage in sexual activity. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.

Consent cannot be given when a person is *incapacitated*. A person cannot consent if s/he is unconscious or coming in and out of consciousness. A person cannot consent if s/he is under the threat of violence, bodily injury or other forms of coercion. A person cannot consent if his/her understanding of the act is affected by a physical or mental impairment. Consent must be given with rational and reasonable judgment, so if the survivor was physically incapacitated from the consumption of alcohol or drugs, unconsciousness, or any other kind of inability, consent cannot be obtained.

B. Criminal definitions

Section 304 of the Violence Against Women Reauthorization Act (VAWA), known as the SaVE Act provision, obligates the University’s policy to include the definitions used by Kentucky’s penal code (KRS Chapters 500 to 534) for “domestic violence,” “dating violence,” “sexual assault,” “stalking,” and “consent” with respect to sexual offenses. Kentucky’s penal code does not define domestic violence or dating violence, although other crimes may apply to those circumstances. Kentucky’s penal code defines sexual abuse in lieu of sexual assault, stalking, and lack of consent, which are set forth below. Please note that the Kentucky penal code definitions are for your information only as required by federal law. For purposes of applying the University’s policy, the definitions in Part A, above, will govern.

510.110 Sexual abuse in the first degree

(1) A person is guilty of sexual abuse in the first degree when:

(a) He or she subjects another person to sexual contact by forcible compulsion; or

(b) He or she subjects another person to sexual contact who is incapable of consent because he or she:

1. Is physically helpless;
2. Is less than twelve (12) years old; or
3. Is mentally incapacitated; or

(c) Being twenty-one (21) years old or more, he or she:

1. Subjects another person who is less than sixteen (16) years old to sexual contact;
2. Engages in masturbation in the presence of another person who is less than sixteen (16) years old and knows or has reason to know the other person is present; or
3. Engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate; or

(d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate.

510.120 Sexual abuse in the second degree

(1) A person is guilty of sexual abuse in the second degree when:

- (a) He or she subjects another person to sexual contact who is incapable of consent because he or she is an individual with an intellectual disability;
- (b) He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; or
- (c) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who is at least eighteen (18) years old and who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual contact.

(2) In any prosecution under subsection (1)(b) of this section, it is a defense that:

- (a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and
- (b) The other person was at least fourteen (14) years old; and
- (c) The actor was less than five (5) years older than the other person.

510.130 Sexual abuse in the third degree

(1) A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent.

(2) In any prosecution under this section, it is a defense that:

- (a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and
- (b) The other person was at least fourteen (14) years old; and
- (c) The actor was less than eighteen (18) years old.

508.130 Definitions for KRS 508.130 to 508.150

As used in KRS 508.130 to 508.150, unless the context requires otherwise:

(1) (a) To “stalk” means to engage in an intentional course of conduct:

- 1. Directed at a specific person or persons;
- 2. Which seriously alarms, annoys, intimidates, or harasses the person or persons;
and
- 3. Which serves no legitimate purpose.

(b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.

(2) “Course of conduct” means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device. Constitutionally protected activity is not included within the meaning of “course of conduct.” If the defendant claims that he was engaged

in constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence.

(3) “Protective order” means:

- (a) An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;
- (b) A foreign protective order, as defined in KRS 403.7521(1);
- (c) An order issued under KRS 431.064;
- (d) A restraining order issued in accordance with KRS 508.155; and
- (e) Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.

508.140 Stalking in the first degree

(1) A person is guilty of stalking in the first degree,

(a) When he intentionally:

- 1. Stalks another person; and
- 2. Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:
 - a. Sexual contact as defined in KRS 510.010;
 - b. Serious physical injury; or
 - c. Death; and
- (b)
 - 1. A protective order has been issued by the court to protect the same victim or victims and the defendant has been served with the summons or order or has been given actual notice; or
 - 2. A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice; or
 - 3. The defendant has been convicted of or pled guilty within the previous five (5) years to a felony or to a Class A misdemeanor against the same victim or victims; or

4. The act or acts were committed while the defendant had a deadly weapon on or about his person.

508.150 Stalking in the second degree

(1) A person is guilty of stalking in the second degree when he intentionally:

(a) Stalks another person; and

(b) Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:

1. Sexual contact as defined in KRS 510.010;

2. Physical injury; or

3. Death.

510.020 Lack of consent

(1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim.

(2) Lack of consent results from:

(a) Forcible compulsion;

(b) Incapacity to consent; or

(c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

(3) A person is deemed incapable of consent when he or she is:

(a) Less than sixteen (16) years old;

(b) An individual with an intellectual disability or an individual that suffers from a mental illness;

(c) Mentally incapacitated;

(d) Physically helpless; or

(e) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.

(4) The provisions of subsection (3)(e) of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the parties.

III. TITLE IX COORDINATOR

The University's Title IX Coordinator and Deputy Coordinators play the main role in carrying out the University's commitment to provide a positive learning, teaching and working environment for the entire University community. By providing training on preventing sexual misconduct and retaliation, the Title IX Coordinator and Deputy Coordinators strive to maintain a safe campus and provide a good University experience for all.

The responsibilities and functions of the Title IX Coordinator and Deputy Coordinators are set out in this policy, but in general, the Title IX Coordinator and Deputy Coordinators receive and oversee the University's response to reports and complaints that involve possible gender discrimination, including sexual misconduct, to monitor outcomes, identify and address patterns, and assess effects on the campus climate so the University can address issues that affect the wider University community.

More specifically, the Title IX Coordinator and Deputy Coordinators monitor compliance with the reporting, complaint, investigation, hearing and appeals processes outlined in this policy. Upon a finding of prohibited sexual misconduct under this policy, the Title IX Coordinator and Deputy Coordinators determine whether campus-wide remedies are needed in response, including but not limited to revision of policies; increased monitoring, supervision or security; and increased education and prevention efforts. The Title IX Coordinator and Deputy Coordinators also review sanctions issued under this policy to ensure that they, along with any interim measures and long-term measures taken, are reasonably calculated to stop the sexual misconduct and prevent its re-occurrence.

The name, office and contact information for the University's Title IX Coordinator and Deputy Coordinators are identified in **Appendix A** to this policy.

If any person has a question, complaint or concern they believe is covered by these policies and procedures or some other aspect of Title IX, they should contact either Title IX Coordinator or one of the Deputy Coordinators. Reports of sexual misconduct can also be made to "Responsible Employees" as described in this policy.

IV. REPORTING

The University strongly encourages persons who have experienced sexual misconduct, or knows of someone who has experienced sexual misconduct, to report the incident to the University per this policy. **In case of an emergency or ongoing threat, a survivor should get to a safe location and call 911 or 218-5940.** Calling 911 will put you in touch with local police. Calling 218-5940 will put you in touch with Campus Security.

A. Responsible Employees

In addition to the Title IX Coordinator and Deputy Coordinators, the University considers certain people to be “Responsible Employees” which means they are University employees who are required to report alleged sexual misconduct to the Title IX Coordinator or Deputy Coordinator. You are encouraged to speak to a Responsible Employee to make reports of sexual misconduct. The following persons are “Responsible Employees” under this policy: the University’s Title IX Coordinator, the University’s Deputy Title IX Coordinators, the President of the University, Members of the President’s Cabinet, faculty, library staff, the Director of Student Services and all Resident Assistants who serve in University-owned residence halls.

Any member of the University community can file a report with the Title IX Coordinator, Deputy Coordinators or Responsible Employees. If a survivor shares an incident of sexual misconduct with a Responsible Employee, he or she needs to know that it is the Responsible Employee’s responsibility to notify the Title IX Coordinator or a Deputy Coordinator of the incident immediately.

B. Reporting Timeframe

Any person may file a complaint of sexual misconduct at any time. Early reporting is encouraged to preserve evidence and provide the survivor with information regarding rights, options and resources available under this policy and federal/state laws.

The Title IX Coordinator or Deputy Coordinator will provide survivors of sexual misconduct with information about available support services and resources, and also assist survivors in notifying law enforcement, including the local police, if a survivor elects to do so. **Survivors are not required to report to area law enforcement in order to receive assistance from or pursue options within the University.** Reporting sexual misconduct to the police does not commit the survivor to further legal action. However, the earlier an incident is reported, the easier it will be for the police to investigate if the survivor decides to proceed with criminal charges.

C. Reporting Options

This section addresses options for reporting sexual misconduct. The University may investigate sexual misconduct even without a formal complaint whenever it knows or has reasonable cause to believe that sexual misconduct in violation of this policy has occurred.

1. Official Report: Persons are strongly encouraged to make an official report of any incident of sexual misconduct to the Title IX Coordinator or appropriate Deputy Coordinator regardless of whether the incident occurred on or off campus. Official reports can be made directly to the Title IX Coordinator or appropriate Deputy Coordinator via a written statement or an appointment. Official reporting initiates a course of immediate action. In cases where a complainant states he or she does not want to pursue a formal complaint, the ability of the University to investigate may be limited. Even if a complainant does not want to pursue an investigation, under some circumstances the Title IX Coordinator or Deputy Coordinator may have an obligation to investigate a complaint, such as when there is a risk to the campus community if the accused remains on campus. When determining whether to go forward with an investigation,

the Title IX Coordinator or Deputy Coordinator may consider factors such as the seriousness of the allegation, the age of the complainant, whether there have been other complaints or reports against the accused, and the rights of the accused to receive information about the complainant and the allegations if a hearing and possible sanctions may result from the investigation. The University will evaluate a person's request that his or her name not be revealed in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. In the event the student requests that the school inform the perpetrator that the student asked the school not to investigate or seek discipline, the University will honor this request and inform the alleged perpetrator that the school made the decision to go forward.

If a person decides to make an official report, a detailed (written, typed, emailed, or handwritten) statement of the alleged incident(s) should be submitted to the Title IX Coordinator or Deputy Coordinator. This formal statement should be signed and dated. The statement should be as specific as possible, including dates, times, locations, a description of the alleged misconduct and the name(s) of the accused person(s), and further provide a list of any person(s) who may have information that would be helpful to the investigation and review. The Title IX Coordinator or Deputy Coordinator will promptly investigate all formal reports.

2. Confidential Disclosure: Despite the University's strong interest in having persons report complaints of sexual misconduct, the University realizes that not everyone is prepared to make an official report to the University. You can seek help from certain resources that are not required to tell anyone else your private, personally identifiable information unless there is cause for fear for your safety or the safety of others. If a person desires that details of the incident be kept confidential, they should speak with a counselor, clergy (e.g., the Campus Chaplain) or other professional provider who by law can maintain confidentiality. Such professionals generally are not required to report personally identifiable information given in confidence unless given permission. If the person chooses not to pursue a judicial process option (e.g., criminal charges), generally no further action will be taken unless the professional who receives the concern believes there is an imminent threat to the survivor or others. Persons who disclose incidents of sexual misconduct to counselors, clergy or other professional providers who can maintain confidentiality should discuss whether to have that person report the misconduct to the University and request interim measures required by Title IX, or request discretionary support measures from the University without reporting the nature of the conduct.

3. Requests via a Counselor, Clergy or other Provider: A survivor may have his/her counselor, clergy or other professional provider who can maintain confidentiality request interim measures from the University on the survivor's behalf. The request may trigger the University's obligation to investigate. To the extent a counselor, clergy or other professional provider who can maintain confidentiality makes a disclosure but, consistent with the survivor's wishes, asks the University not to investigate or otherwise notify the accused of the report, the Title IX Coordinator or Deputy Coordinator will consider whether he/she can honor the request while still providing a safe and nondiscriminatory environment for all students, faculty and staff, and to take interim measures to protect the survivor as needed.

D. Confidentiality

Reports and personal information will be kept as confidential as possible to the extent the law allows and to the extent confidentiality is consistent with the University's need to protect the

safety of the University community. Requests for confidentiality will be evaluated by the Title IX Coordinator or Deputy Coordinator assigned to the report. Complete confidentiality cannot be promised as the University will need to thoroughly investigate the case, and may need to share some information with relevant administrators of the University in order to further protect and prevent incidents. Reports to law enforcement may be shared with the University's Title IX Coordinator or Deputy Coordinator. The University may be required by law to publish non-identifying information in campus crime statistics.

All University employees (with the exception of those who may be bound by confidentiality laws or privileges such as medical professionals, counselors and chaplains) must share information that they learn of regarding a report of sexual misconduct with the Title IX Coordinator or Deputy Coordinator so they can investigate the matter and determine whether steps are needed to ensure the safety of the University community.

It is the survivor's choice as to whether he/she participates in an investigation; however, the University may proceed with an investigation without the survivor's participation.

E. Drug and Alcohol Amnesty

The University offers amnesty (immunity) to students who may have violated the University's policies concerning the use of drugs and/or alcohol at the time of the incident when he or she became a survivor of, or witnessed, sexual misconduct. Therefore, no alcohol or drug charges are applied to a student who reports that he or she was under the influence of alcohol and/or drugs at the time of a sexual misconduct incident. The University's amnesty policy refers and is limited to amnesty from violations of the Substance Abuse Policy.

The purpose of this section is to encourage reporting. Survivors or bystanders (witnesses) should not let his or her use of alcohol or drugs deter them from reporting an incident. When conducting the investigation, the University's primary focus will be addressing the sexual misconduct violation and not alcohol/drug use violations that may be discovered or disclosed. However, the University may provide referrals to counseling and may require educational options on drugs and alcohol, rather than disciplinary sanctions, in such cases. However, the amnesty policy will not tolerate or excuse repeated violations of the University's Substance Abuse Policy. Being granted amnesty once does not mean in any way the person violating policy will be protected in the future.

V. ASSISTANCE AND BYSTANDER INTERVENTION

A. Safety Escorts

The University's Campus Security Office provides safety escorts twenty-four hours a day, seven days a week. This service provides students, faculty, and staff with walking or motor vehicle escort between locations on campus.

B. Bystanders

Regardless of whether someone is trained as a "Responder" or escort the University strongly encourages bystanders to "step up" on behalf of another person's wellbeing and safety.

The reporting options listed in this policy are available for bystanders as well. There are also safe and positive options for bystanders who intervene during an incident in order to prevent harm when there was a risk or act of violence. These options include:

Be aware of what is going on around you. Trust your instincts. Assume personal responsibility and say or do something – don't assume that someone else will help.

Assess the situation. You have to decide what the safest way is for you and others involved to help. Gauge whether the situation requires calling authorities. When deciding to intervene, your personal safety should be the #1 priority. When in doubt, call for help. Other possible people to reach out to for assistance in helping are faculty, staff, supervisors, counselors, etc.

Decide whether to use direct or indirect action to resolve the problem. For example:

- Direct Actions: Point out someone's behavior in a manner that will help de-escalate the situation, talk to a friend to ensure he/she is okay, call the police.
- Indirect Action: Make up an excuse to help someone get away from a potential offender, and call the local authorities.

Intervene – with reinforcements. If you gauge it is safe to intervene, you're likely to have a greater influence on the parties involved when you work together with someone or several people. Your safety is increased when you stay with a group of friends that you know well.

- Remember to intervene in a compassionate, non-threatening manner.
- Be aware of available resources for assisting persons on campus and in the community.
- Encourage them to seek assistance and offer them resources for assistance.

Remember, 911 is often the best way to intervene if there is a question of safety for anyone.

VI. WRITTEN NOTICE OF RIGHTS AND OPTIONS

Any person who reports an incident of sexual misconduct, regardless of whether the incident occurred on or off campus, shall receive a written explanation of their rights and options as provided for under this policy. These rights and options include the right(s) of a survivor to:

- Go to court, and to file a domestic abuse complaint requesting an order restraining your attacker from abusing you, and/or an order directing your attacker to leave your household, building, school, the University or your workplace.
- Seek a criminal complaint for threats, assault and battery, or other related offenses.

- Seek medical treatment (the police will arrange transportation for you to the nearest hospital or otherwise assist you in obtaining medical treatment if you wish).
- Request the police remain at the scene until your safety is otherwise ensured.
- Request that a police officer assist you by arranging transportation or by taking you to a safe place, such as a shelter or a family or friend's residence.
- Obtain a copy of the police incident report at no cost from the police department.

VII. PROCEDURES SURVIVORS SHOULD FOLLOW

If an incident of sexual misconduct occurs, it is important to preserve evidence so that successful criminal prosecution remains an option.

The survivor of a sexual assault should not wash, shower or bathe, douche, brush teeth, comb hair, or change clothes prior to a medical exam or treatment. If a survivor has removed the clothing he or she was wearing during the assault prior to seeking medical treatment, that clothing should be placed in a brown paper, not plastic, bag and brought to the hospital when treatment is sought. If the survivor is still wearing the clothes that he or she was wearing during an assault, he or she should bring a change of clothes with him or her to the hospital so that the clothes containing possible evidence can be preserved and examined for evidence of the crime.

Evidence of violence, such as bruising or other visible injuries following an incident of sexual assault, should be documented by taking photographs. Evidence of stalking, including any communications such as written notes, email, voice mail, or other electronic communications sent by the stalker, should be saved and not altered in any way.

VIII. INTERIM MEASURES AND ACCOMMODATIONS

The Title IX Coordinator and Deputy Coordinators have the right to take necessary measures to protect a person's rights and personal safety. Therefore, interim measures will be available to protect persons from any kind of retaliation or threatening situations during and after the investigation process. These measures include but are not limited to changes in class schedules, living or working arrangements; safety escorts; parking arrangements; dining arrangements; and resources for professional counseling. Regardless of whether a person reports an incident of sexual misconduct to law enforcement or pursues any formal action, if they report such an incident to the University, the University is committed to providing them as safe a learning or working environment as possible.

The Title IX Coordinator or Deputy Coordinator determines which measures are appropriate for survivors on a case-by-case basis. Upon receiving a report of sexual misconduct, the Title IX Coordinator or Deputy Coordinator will ask the survivor or his/her counselor, provider or advocate what interim measures, if any, are sought. If the survivor or his/her counselor, provider or advocate identifies an interim measure that is not already provided by the University, the Title IX Coordinator or Deputy Coordinator will consider whether the request can be granted. In those

instances where interim measures affect both a survivor and the accused, the Title IX Coordinator or Deputy Coordinator will minimize the burden on the survivor wherever appropriate.

When a survivor's counselor or other confidential disclosure provider asks for any of the above-listed interim measures without disclosing that sexual misconduct is the basis for the request, the Title IX Coordinator or Deputy Coordinator will consider the request consistent with its general policy of allowing counselors, providers and advocates to seek such measures for survivors of trauma without requiring that the nature of trauma be disclosed.

The University is also committed to ensuring that orders of protection issued by courts are upheld on all University-owned, used and controlled property, as well as properties immediately adjacent to the University. Therefore, if any member of the University community obtains an order of protection or restraining order, he or she should promptly inform the Title IX Coordinator or Deputy Coordinator and provide him/her with a copy of that order so the University can enforce it. The University is also committed to protecting survivors from further harm, and if the Title IX Coordinator or Deputy Coordinator determines that a person's presence on campus poses a danger to one or more members of the University community, he/she can issue an institutional "No Contact" or "No Trespass" order barring that person from University property.

IX. INVESTIGATION AND HEARING PROCESS

The University's Title IX Coordinator or Deputy Coordinator will investigate alleged violations of this policy regardless of whether the conduct is alleged to have occurred on-campus or off-campus. Each report must be evaluated on a case-by-case basis, taking into account the relevant circumstances of each case. The investigation process may include interviews, reviewing student and/or employee files, and gathering and examining other relevant evidence. Both parties may present witnesses or evidence during the investigation process. The investigation process will be balanced and fair and give both the accused and the complainant the chance to discuss their involvement in the reported incident. Allegations of sexual assault will not be referred to informal mediation.

If the investigation concludes that evidence exists to suggest that a violation of this policy more likely than not occurred, the Title IX Coordinator or Deputy Coordinator will refer the case for a hearing before the University's Sexual Misconduct Board, which for purposes of this policy will consist of a pool of University faculty, staff, and administrators appointed by the President, from whom three (3) members will be asked by the Title IX Coordinator or Deputy Coordinator as needed to hear cases referred to the Sexual Misconduct Board.¹

Each party will have the following hearing rights:

- The right to notice of the specific allegations at issue, including notice of anticipated witnesses and evidence to be addressed at hearing.

¹ In the event of a conflict of interest, the board member who has the conflict will recuse himself/herself from the committee and the chairperson will appoint a replacement.

- The right to access information and evidence directly related to them within a reasonable time before hearing.
- The right to attend the hearing. The University may proceed with a hearing even if a party declines to exercise his or her right to attend.
- The right to have an advisor of their choice present at the hearing and speak on his/her own behalf. Advisors may not directly participate in the hearing. Invoking the right not to speak will not be considered an admission of responsibility.
- The right to introduce evidence and question witnesses at the hearing, provided, however, that the complainant and the accused will not be allowed to directly question each other.

Hearings will be closed to the public. The Title IX Coordinator may accommodate concerns for the personal safety, well-being and/or fears of participants during the hearing by providing separate facilities, by using a visual screen and/or by permitting participation by telephone, video conference or other means as appropriate.

Prior to a hearing, the Sexual Misconduct Board will elect a chairperson among themselves for purposes of that hearing. That chairperson will be responsible for conducting the hearing, ruling on objections, and ensuring written notice of the Sexual Misconduct Board's decisions is prepared. Following a hearing, the Sexual Misconduct Board will deliberate and determine whether, given the evidence and testimony presented, it is more likely than not that a violation of this policy occurred. Possible hearing outcomes include, but are not limited to, changes to class schedules; changes to living arrangements; suspension, separation or expulsion from the University; and reporting the incident to the local police. The measure taken will depend upon the individual circumstances.

The Title IX Coordinator will inform both parties in writing of the outcome the investigation and/or hearing within seven (7) business days of the investigation and/or hearing's conclusion. Notice of the outcome to the Complainant will include whether or not it found that the alleged conduct occurred, any individual remedies offered or provided to the Complainant or any sanction imposed on the perpetrator that directly relate to the Complainant, and other steps the school has taken to eliminate the hostile environment, if one is found to exist, and prevent recurrence of any hostile environment. The notice of outcome to the Complainant will also include any disclosures which the University is required by the Clery Act or other law to disclose.

As a general rule, the University will complete the investigation and hearing process within sixty (60) calendar days from receipt of a report. However, the University may extend that time frame under special circumstances such as complex cases requiring extensive investigation and breaks between academic periods making relevant parties or officials unavailable. The University will work to keep extensions to a minimum and will keep the parties informed of the status of their case.

Survivors always have the option to file a criminal report in addition to or in lieu of a report under this policy. In no case should a survivor be dissuaded from reporting sexual misconduct to

law enforcement. Regardless whether a survivor elects to file a criminal report, the University will conduct a separate investigation of its own consistent with this policy. If the accused is not affiliated with the University, an investigation will still be conducted. The Title IX Coordinator or Deputy Coordinator may issue a No Contact or No Trespass order to an accused unless and until the accused is found not responsible. If the accused is a student or faculty from a visiting institution, the University reserves the right to contact that institution for further investigation.

Throughout the process, arrangements will be made to prevent the parties from having direct contact or communication with each other.

The Title IX Coordinator will keep a record of the hearing and investigation process for each case.

X. APPEAL PROCESS

Once a decision has been made and both parties have been notified of the outcome, either party may appeal that outcome to the President's designee for appeals. Information about the current President's designee is available online or by contacting the Title IX Coordinator. Appeals must be received by the President's designee no later than five (5) business days after the date the underlying decision is issued. Appeals received after the deadline will not be processed. Appeals should be marked "confidential" and submitted by email or mail to the President's designee.

Both parties will be notified in writing by the President's designee that an appeal was received. The burden of proof lies with the appellant.

The President's designee will assess and decide the appeal based on the investigation and hearing record from the previous levels within twenty-one (21) calendar days of receiving the appeal, unless circumstances require more time, in which case the President's designee will advise the parties of the need for more time. Grounds for appeal are limited to the following:

- The University made a procedural error, which could have significantly affected the outcome.
- Previously unavailable and relevant evidence was found that could impact the final result.
- The determination of whether a violation occurred was arbitrary and unjustified by the evidence presented at hearing.
- The penalties imposed or other protective measures taken are too severe based on the evidence of record.

President's designee will notify the parties of the outcome of the appeal. Appeal decisions are final. The Title IX Coordinator will keep a record of the appeal process.

XI. NO RETALIATION OR DETERRENCE FOR FILING REPORTS

The University strictly prohibits retaliation for making a report under this policy or participating in an investigation or hearing under this policy. Examples of retaliation include, but are not limited to, a face-to-face threat, a digital message and/or physical intimidation. Retaliation can be by someone other than the accused. Any person who feels they have been retaliated against as a result of a report under this policy should contact the Title IX Coordinator or a Deputy Coordinator immediately.

XII. RESOURCES

A. On-Campus Resources

In person counseling:

Campus Chaplain, Rob Musick: 606-218-5762
Appalachian Community Services: 606-253-3045

The Title IX Coordinator or Deputy Coordinator can provide information about area counselors for survivors of sexual misconduct. A formal report is not required to access these resources.

B. Online Resources

If a person feels the need to pursue further help and counseling, there are institutions and charity groups that are specialized and specifically trained to aid survivors of different violent crimes. A formal report is not required to access these resources. These are some nationwide websites that provide help:

National Domestic Violence Hotline
<http://www.thehotline.org/>

Stalking Resource Center
<http://www.victimsofcrime.org/our-programs/stalking-resource-center>

National Sexual Assault Hotline
<http://www.rainn.org/get-help/national-sexual-assault-online-hotline>

Girls Health Website
<http://www.girlshealth.gov/safety/saferrelationships/daterape.html>

Clery Center for Security on Campus
<http://clerycenter.org/help-victims>

C. Off-Campus Resources

In addition to the resources listed above, the following off-campus resources are available:

- Emergency Services (911).
- Rape Crisis Center (606-263-4935)
- National Sexual Assault Hotline (800-656-4673)

XIII. TRAINING AND EDUCATION

All students, faculty and staff must annually complete University-sponsored training on sexual misconduct issues within the dates and times arranged by the Title IX Coordinator. Failure to do so may result in corrective action. Annual training will, at minimum, cover the following:

- University policies and procedures for reporting and addressing sexual misconduct;
- Reminders that the University prohibits the offenses of domestic violence, dating violence, sexual assault, sexual exploitation and stalking;
- The definitions for domestic violence, dating violence, sexual assault, sexual exploitation and stalking;
- The definition of consent and “welcome” conduct;
- Training on safe and positive options for bystander intervention that may be carried out by an person to prevent harm or intervene when there is a risk of sexual misconduct against a person other than such person;
- Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks;
- Possible sanctions or protective measures that such institution may impose following a final determination of an institutional disciplinary procedure regarding sexual misconduct;
- Procedures survivors should follow if sexual misconduct has occurred;
- Procedures for institutional disciplinary action in cases of alleged sexual misconduct;
- Information about existing counseling, health, mental health, survivor advocacy, legal assistance, and other services available for survivors both on-campus and in the community; and

- Information about survivor options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the survivor and if such accommodations are reasonably available, regardless of whether the survivor chooses to report the crime to campus police or local law enforcement.

In addition, the University provides informational resources such as crime bulletins and alerts and bulletin board campaigns.

Faculty and Staff

Both faculty and staff play an important role in helping the University carry out its commitment to prevent sexual misconduct. Many times survivors turn to teachers and staff members for help. Therefore, it is necessary to know the procedures to aid the student and to file a complaint. Also, the ability to notice signs of sex discrimination could protect the survivor from further harm.

All employees, including faculty and staff, will be required to take an online training program that will include an evaluation in order to facilitate a working understanding of Title IX and the University's related policies and procedures. Employees must complete training on an annual basis per schedules set by the Title IX Coordinator. Employees who fail to complete training within the time allowed are subject to disciplinary action consistent with University policy.

Students

Students need to go through training which will enable them to seek help if they encounter sexual misconduct, as well gain knowledge about related University policies and resources. Student training aims to educate students about what Title IX means, what qualifies as sexual misconduct and what rights students have under University policy and the law.

Training is not only important to a student's personal safety but also to help others who might be in risk of or already subject to sexual misconduct. Many times survivors feel intimidated to seek authorities help, but with the guidance and help of a friend they find the courage to report the incident.

All students, including incoming freshmen and transfers, will be required to take an online training program that will include an evaluation in order to facilitate a working understanding of sexual misconduct and the University's related policies and procedures. Students must complete training on an annual basis per schedules set by the Title IX Coordinator. Students who fail to complete the training within the time allowed may not be able to register for the following semester until they have completed the training. Other educational programs and materials will be provided to students throughout the academic year through Student Services.

Appendix A

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