



Equal Opportunity, Harassment, and Nondiscrimination Policy

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Rationale for Policy

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

Applicable Scope

The core purpose of this Policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. At other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, it can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence, or domestic violence. When the University receives notice or a direct report of an alleged violation of this nondiscrimination policy, the allegations are subject to resolution using Wilkes University’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 Wilkes community, a formal complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Wilkes community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, vendors, contractors, invitees, and campers. The procedures 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.

Definitions

Advisor: means a person chosen by a party or appointed by the University 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.

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

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

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

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

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

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

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

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

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

Formal Grievance Process: means either "Process A," a method of formal resolution designated by the University to address conduct that falls under Title IX or other sexual misconduct offenses, and which complies with the requirements of 34 CFR 106.45; or "Process B" which addresses other civil rights offenses and retaliation in accordance with applicable state and federal laws and regulations.

Grievance Process Pool: includes any investigators, hearing decision-makers, and advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).

Investigator: means the person or persons charged by the University 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 of relevant evidence and a file of directly related evidence. This may be a trained University employee or a contracted external individual.

Mandated Reporter: means an employee of the University who is obligated by this Policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

University Judicial Council (UJC): An adjudicating body that considers appeals of “Process A” and “Process B” case decisions. The option for an appeal is available to both Complainant and Respondent.

Title IX Coordinator

The Title IX Coordinator oversees implementation of Wilkes University’s Policy on Equal Opportunity, Harassment, and Nondiscrimination and Disability compliance (including compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973). The Title IX Coordinator has the primary responsibility for coordinating Wilkes University’s efforts related to the intake; investigation; resolution as

described more fully in “Process A” and “Process B”; and implementation of supportive measures to stop, remedy, and prevent discrimination, harassment, and retaliation prohibited under this Policy. Where “Title IX Coordinator” is referenced in this Policy, a Deputy Title IX Coordinator (or other appropriate designee) also has the ability to fulfill the roles and responsibilities as detailed.

Independence and Conflict-of-Interest

The Title IX Coordinator shall act with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and accompanying 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 Vice President and General Counsel. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator. An individual’s prior professional pursuits are not alone a reason for bias. It must be determined that the individual cannot perform their responsibilities fairly and impartially, and they will be recused only on the basis of a demonstrated bias and/or conflict of interest.

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Vice President and General Counsel. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.

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:

Interim Title IX Coordinator

Philip J. Ruthkosky, Ph.D.
Associate Dean Student Development
2nd Floor Passan Hall
Wilkes-Barre, PA 18766
Phone: (570) 408-4108
philip.ruthkosky@wilkes.edu

Deputy Title IX Coordinator – Faculty/Staff

Kristin Pitarra
Human Resources Director
10 East South Street, Suite A
Wilkes-Barre, PA 18766
Phone: (570) 408-2034
Kristin.pitarra@wilkes.edu

Web: www.wilkes.edu/titleix

The University has determined that the following administrators are Officials with Authority to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX Coordinators listed above, these Officials with Authority listed below may also accept notice or complaints on behalf of the University. All of the following Officials with Authority will promptly report any complaints to the Title IX Coordinator:

- Title IX Coordinator/Deputy Title IX Coordinators

- President of the University
- Senior Level Administrators
 - Vice Presidents
 - Academic Deans
 - Department and/or Division Chairs
- Student Affairs Deans
- Director of Athletics and Associate Director of Athletics
- Director of Residence Life and Area Coordinators
- Chief Human Resources Officer and Human Resources Director
- University Police Department

The University has also classified all employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

Assistant Secretary for Civil Rights
 Office for Civil Rights, National Headquarters U.S. Department of Education
 Lyndon Baines Johnson Dept. of Education Building 400 Maryland Avenue, SW
 Washington, DC 20202-1100
 Telephone: 800-421-3481
 Fax: 202-453-6012; TDD: 800-877-8339
 Email: OCR@ed.gov

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
 Facsimile: (215) 656-8605
 Email: OCR.Philadelphia@ed.gov
 Web: <http://www.ed.gov/ocr>

You can find an instructional video on how to file a complaint with the OCR [here](#).

University employees may also make external inquiries to:

Equal Employment Opportunity Commission,
 Philadelphia District Office
 801 Market Street, Suite 1000
 Philadelphia, PA 19107-3126
 United States
 Telephone: 1-800-669-4000 / (267) 589-9700
 Facsimile: (215)- 440-2606
 Email PDOContact@eeoc.gov
 Web: <https://www.eeoc.gov>

Filing a Formal Complaint/Notice

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

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

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

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

A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the institution investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase "document filed/signed by the Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by Wilkes University) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the University investigate the allegations.

When a complaint is submitted, the Title IX Coordinator may contact the Complainant to ensure that it is filed correctly. Moreover, when the Title IX Coordinator or another Official with Authority receives notice in any form, the Title IX Coordinator will contact the Complainant to offer the opportunity to file a Formal Complaint.

Preservation of Evidence

The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and to obtaining protection orders, and is particularly time-sensitive. After a sexual assault occurs, the most important step is to get to a safe place. After doing so, the Complainant can preserve evidence by taking the following actions:

- 1) Seek forensic medical assistance at the hospital, ideally within 120 hours of the incident (sooner is better);

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

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

Supportive Measures

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

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

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

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

These actions may include, but are not limited to:

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

- Connection to local resources for help on how to obtain a Protection from Abuse or Sexual Violence Protection Order;
- [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.

Emergency Removal

The University 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, employee, or other individual justifies removal. This risk analysis is facilitated by the Title IX Coordinator in conjunction with the Behavioral Threat Assessment Team (students) or with a combination of representative(s) from Human Resources, the Provost Office, University Police Department and/or the appropriate supervisors/department chairs (employees).

In all cases in which an emergency removal is imposed, the Respondent will be given notice of the action and the option to participate in a meeting with the Title IX Coordinator and/or Deputy Title IX Coordinator prior to such action/removal being imposed, or immediately following the removal, to show cause why the action/removal should not be implemented or should be modified. Notice will be made by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official University records, by telephone, or emailed to the parties' University-issued email or designated accounts.

This Show Cause 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 three (3) business days after notice is given, 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(s) determines it is equitable to do so, such as when the decision for emergency removal is directly related to the Complainant. 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(s) for the Show Cause Meeting. The Respondent will be given access to a written summary of findings that provide the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator(s) has sole discretion under this Policy to implement or stay an emergency removal and to determine the conditions and duration. The Title IX Coordinator will review the individualized safety and risk analysis; all information and evidence provided by the Respondent at the Show Cause Meeting; and any information or evidence submitted by the Complainant, to determine whether a genuine emergency involving the physical health or safety of one or more individuals (including the Respondent, Complainant, or any other individual) exists. Violation of an emergency removal under this Policy will be grounds for discipline, which may include expulsion or termination.

Wilkes University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator(s), in consultation with other appropriate University administrators as necessary, 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, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

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

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

Promptness

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

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

Privacy

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

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

Only a small group of officials who need to know will typically be told about the complaint. 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.

The University may contact parent/guardians of students 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.

Confidentiality and mandated reporting are addressed more specifically below.

Jurisdiction

This Policy applies to the education program and activities of Wilkes University, to conduct that takes place on the campus or on property owned or controlled by the University, at University-sponsored events, and in buildings

owned or controlled by University-recognized student organizations. The Respondent must be a member of the Wilkes University community in order for this Policy to apply.

This Policy can also be applicable to the effects of off-campus misconduct that effectively deprive a person of access to Wilkes University's educational program. The University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator(s) determines that the conduct affects a substantial University interest (as defined below).

Regardless of where the conduct occurred, the University 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 University 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, employee, or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of others, or significantly breaches the peace, and/or causes social disorder; and/or
- d. Any situation that substantially interferes with the educational interests or mission of the University.

If the Respondent is unknown or is not a member of the Wilkes community, the Title IX Coordinator(s) will assist the Complainant in identifying appropriate campus and local resources and support options. If criminal conduct is alleged, the University can assist 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 the University's community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the Title IX Coordinator(s).

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

All vendors serving the University through third-party contracts are subject to the policies and procedures of their employers and are expected by the University to act in accordance with these Policies and Procedures.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator 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.

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 University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time is at the discretion of the Title IX Coordinator(s), 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, the University will apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

Policy on Nondiscrimination

Wilkes University is committed to providing a welcoming environment for all members of our community and to ensuring that all educational and employment decisions are based on individuals' abilities and qualifications. Wilkes University prohibits discrimination in its educational programs, employment, admissions or any activities on the basis of race, color, national or ethnic origin, age, religion, disability, pregnancy, gender, gender identity and/or expression, sexual orientation, marital or family status, military or veteran status, genetic information, or any other characteristic protected under applicable federal, state or local laws.

Consistent with this principle, Wilkes University will comply with state and federal laws such as the Pennsylvania Human Relations Act or other applicable state law, Title IX, Title VI and Title VII of the Civil Rights Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1967, the Ethnic Intimidation Act of 1982 (P.L. 537-154) and other laws that prohibit discrimination.

As a recipient of federal financial assistance for education activities, Wilkes University is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex/gender, including in admissions and employment. Sexual harassment, sexual assault, dating and domestic violence, and stalking are forms of sex discrimination, which are prohibited under Title IX and this Policy.

All members and visitors of the Wilkes University community have the right to raise concerns or make a complaint regarding discrimination under this Policy without fear of retaliation.

This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the Wilkes community whose acts deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of the Wilkes 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 University's Policy on Nondiscrimination.

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

Policy on Disability Discrimination and Accommodation

Wilkes is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the University, regardless of whether they currently have a disability. A substantial impairment is defined by the ADA as one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

Wilkes University's Title IX Coordinator is responsible for overseeing efforts to comply with these disability laws, including responding to grievances and in coordination with other University administrators, conducting investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status and/or accommodations will be addressed using the Resolution Process for Alleged Violations of Other Civil Rights Offenses (Process B).

Students with Disabilities

Wilkes is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of the University.

Under Section 504, a student is qualified as having a disability if they: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment.

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Director of the Learning Center, who coordinates services for students with disabilities.

The Director of the Learning Center reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s).

Employees with Disabilities

Pursuant to the ADA, Wilkes will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to the University.

An employee with a disability is responsible for submitting a request for an accommodation to the Title IX Coordinator and providing necessary documentation. The Title IX Coordinator will work in coordination with the Office of Human Resources and the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

Policy on Discriminatory Harassment

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. Wilkes University'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 prohibited under the University's Policy. All policies encompass actual and/or attempted offenses.

Discriminatory Harassment

Discriminatory harassment constitutes a form of discrimination that is prohibited by Wilkes University's Policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law. Wilkes does not tolerate

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

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

When discriminatory harassment rises to the level of creating a hostile environment, Wilkes may also impose sanctions on the Respondent through application of the appropriate grievance process described more fully in Process “A” or Process “B”.

The University 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. Such conduct may be addressed through respectful conversation, remedial actions, education, effective, and/or other resolution mechanisms per the Employee Policies Manual and/or the Student Handbook.

Title IX Offenses

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

Wilkes has adopted the following definition of sexual harassment in order 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.

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: An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;

Sexual Harassment: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or

Sexual Assault, defined as: an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.²

Any sexual act including Rape, Sodomy, Sexual Assault With An Object, or Fondling directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also unlawful sexual intercourse

¹ These definitions are required to be used per the Title IX Regulations issued at 34 CFR Part 106 and published on May 22, 2020.

² The FBI UCR currently uses two crime reporting programs, the SRS and the NIBRS.

- **Rape**—(Except Statutory Rape) The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity³
- **Sodomy**—Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- **Sexual Assault With An Object**—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- **Fondling**—The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- **Incest**—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- **Statutory Rape**—Nonforcible sexual intercourse with a person who is under the statutory age of consent

Dating Violence, defined as: Violence committed by a person— (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (i) The length of the relationship.
- (ii) The type of relationship.
- (iii) The frequency of interaction between the persons involved in the relationship.

For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

Domestic Violence, defined as: The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of Pennsylvania.

*To categorize an incident as Domestic Violence under this Policy, 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.

Stalking, defined as: The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for his or her safety or the safety of others; or (B) 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

³ Also defined by the SRS and used for purposes of this Policy, as “Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”

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

Other Sexual Misconduct Offenses

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

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

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

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

Force, Coercion, Consent, and Incapacitation

As used in coordination with 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,” which elicits the response, “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.

Consent: a knowing and voluntary agreement, with 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, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

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

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

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

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

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

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

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

Other Civil Rights Offenses

In addition to the conduct described above, which fall either within the coverage of Title IX or “Other Sexual Misconduct” offenses, the University additionally prohibits the following offenses as forms of discrimination when the act is based upon the Complainant’s actual or perceived membership in another protected class.

Protected Class Harassment: As defined in the “Discriminatory Harassment” paragraph above.

Discrimination: actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities, including disparate treatment.

Intimidation: implied threats or acts that cause an unreasonable fear of harm in another.

Threats/Physical Harm: 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.

Bullying: repeated and/or severe aggressive behavior that is likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally.

Hazing: any action or situation created on or off-campus which recklessly or intentionally harms, damages, or endangers the mental or physical health or safety of any person within the Wilkes community for the purposes of, including, but not limited to, initiation or admission into or affiliation with any organization operating within the University (as further detailed in the University's [hazing policy](#)).

All reported bias incidents will be evaluated under this Policy to determine whether they constitute one of the offenses listed above.

Violation of any other University 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.

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. Wilkes University will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation. Grievances related to claims of retaliation will be addressed using the Resolution Process for Alleged Violations of Other Civil Rights Offenses (Process B).

It is prohibited for the University or any member of the University 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 Procedures.

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.

Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the University 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.

The University 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.

Mandated Reporting

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

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

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

Confidential Resources

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

On Campus:

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

Off Campus:

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

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

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

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

When a Complainant Does Not Wish to Proceed

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

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

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

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

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

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

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

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

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

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

Amnesty Policy

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

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

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

program. This amnesty provision also applies to student groups making a report of misconduct. Amnesty does not preclude or prevent action by police or other legal authorities pursuant to relevant state or federal criminal statutes.

Employees: Sometimes, employees are hesitant to report harassment or discrimination they have experienced for fear that they may get in trouble themselves. The University may therefore, at its discretion, offer employee Complainants and witnesses amnesty from minor policy violations related to the incident.

False Allegations and Evidence

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under either the Student Handbook or Employee Policies Manual.

Resolution Process and Procedures

Upon receipt of a complaint, the Title IX Coordinator/Deputy Title IX Coordinators will assist the Complainant in identifying the appropriate Grievance Procedures to resolve the complaint in a prompt and equitable manner.

For allegations qualifying as “Title IX” or “Other Sexual Misconduct” Offenses, Process “A” applies.

For allegations qualifying as “Other Civil Rights” Offenses, Process “B” applies.

This Policy and Procedures are effective on August 14, 2020.

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