

SEXUAL MISCONDUCT POLICY

INTRODUCTION

West Chester University is committed to creating and maintaining a campus environment where safety, health, and well-being are priorities for all. Sexual misconduct includes a variety of acts that are perpetrated against another without consent or when an individual is unable to freely give consent. Accordingly, the University will not tolerate any form of sexual misconduct, including sexual assault, sexual harassment, sexual exploitation, dating violence, domestic violence, and stalking. All forms of sexual misconduct are serious offenses with serious consequences. In addition to violating the WCU Student Code of Conduct, some forms of sexual misconduct are both criminal and civil offenses that are punishable by law. Students found responsible for sexual misconduct may face disciplinary actions up to and including expulsion.

The Sexual Misconduct Policy has been developed to:

- educate the campus community about shared values and expectations regarding sexual behavior;
- define sexual misconduct as a range of behaviors prohibited by the Student Code of Conduct;
- clarify the difference between the criminal process that might be pursued through district attorneys and police, over which the University has no control, and the procedures for addressing reports of sexual misconduct violations under the West Chester University Student Code of Conduct;
- describe the rights of those who report violations and those who are accused of violating the Sexual Misconduct Policy;
- provide guidance on what a person should do if they have been sexually assaulted or victimized;
- communicate University procedures regarding the rights of victims and the accused;
- ensure compliance with appropriate state and federal regulations, including Title IX and Jeanne Clery Act;
- identify campus and community resources for those who wish to report sexual misconduct and for students who have been accused of sexual misconduct.

The policy addresses sexual misconduct as a violation of the WCU Student Code of Conduct and therefore only applies to situations involving students who are accused of and victims of sexual misconduct.

All incidents of sexual misconduct should be reported within 24 hours or as soon as reasonably feasible to the Title IX Coordinator/Social Equity Director, Lynn Klingensmith, 13-15 University Ave, 610-436-2433, lklingensmith@wcupa.edu. If you are a victim of sexual misconduct, please report the incident to Title IX Coordinator/Social Equity Director, Lynn Klingensmith, as soon as you are able to do so. Sexual misconduct complaints against students will be processed by the Office of Student Conduct; complaints against employees will be processed by the Office of Social Equity.

The policy and procedures addressed here are in addition to, and not a replacement for, any legal options that may be available. Any criminal process is separate from proceedings at the University level. Those interested in pursuing a criminal investigation should contact the Office of Public Safety (610-436-3311) or dial 911 for the police.

Sexual misconduct violates Title IX of the Education Amendments of 1972. This means that a victim may file a complaint with the WCU Title IX Coordinator/Social Equity Director, Lynn Klingensmith, 610-436-2433, lklingensmith@wcupa.edu, Office of Social Equity, 13-15 University Avenue.

Complaints may also be filed with the U.S. Department of Education, Office of Civil Rights at <https://wdcrobcopl01.ed.gov/cfapps/OCR/contactus.cfm> or by phone at 215-656-8541.

What is Title IX? This is a portion of the Educational Amendments of 1972 which prohibits discrimination based on sex.

Immediate Need of Information and Care:

As you read this and are looking for immediate care, please refer to the resources section (see page 28) and seek a resource you are comfortable with as soon as you are able. The resources lists support for those who have experienced sexual misconduct and those who may be accused of sexual misconduct.

It is important to know that right now, you can reach out to a resource, the Title IX Coordinator, and interim measures can be put in place.

Interim measures can be provided to students by contacting the Title IX Coordinator who will work in conjunction with the Director of Student Conduct to implement them.

Students may request the following interim measures:

- housing reassignment to ensure that victim and accused are not in close proximity;
- limitations on contact between parties (referred to as a “No Contact Directive”);
- an escort to ensure the victim’s safety;
- reassignment of classes to ensure that the victim and accused are not attending the same class,
- counseling services;
- medical services ;
- academic support such as tutoring;
- to withdraw from a class without penalty;
- adjustments to on-campus transportation, parking, or work;
- Other remedies and/or measures not listed can be considered to ensure the safety of all involved parties in the case and the campus community.

WHAT IS SEXUAL MISCONDUCT?

DEFINITIONS OF SEXUAL MISCONDUCT

The Sexual Misconduct Policy at West Chester University covers a variety of acts that are perpetrated against another without consent or when an individual is unable to give consent freely. Anyone can be a victim regardless of their gender, age or sexual orientation. Sexual misconduct includes, but is not limited to, the following prohibited behaviors:

- Sexual Harassment
- Sexual Assault
- Sexual Exploitation
- Stalking
- Dating Violence
- Domestic Violence

CONSENT

Consent is an informed decision made freely and actively by all parties. Conduct will be considered “without consent” if no clear consent, verbal or nonverbal, is given. Because sexual misconduct is defined as sexual activity that is undertaken without consent, each participant must obtain and give consent to each sexual act.

Consent is an affirmative decision to engage in mutually acceptable sexual activity, and consent is given by clear actions or words. People are strongly encouraged to talk with each other before and during any sexual interaction. Relying solely upon non-verbal communication can lead to miscommunication.

It should be noted that in some situations an individual's ability to freely consent is taken away by another person or circumstance. Examples include when an individual is significantly impaired due to alcohol or other drugs, scared, physically forced, passed out, intimidated, coerced, mentally or physically impaired, beaten, threatened, isolated, or confined.

People with mental disabilities cannot give consent to sexual activity if they cannot understand the act, nature, consequences [risks] including both negative and positive or extent of the sexual situation in which they find themselves. The mental disability of the victim must be known (or reasonably knowable) to the non-disabled sexual partner, in order to hold them responsible for the violation.

The following are clarifying points:

- Consent is required each and every time there is sexual activity;
- At any and all times when consent is withdrawn or not verbally agreed upon, the sexual activity must stop immediately;
- Consent to some levels of sexual activity does not imply consent to all levels of sexual activity. Each new level of sexual activity requires consent;
- The person(s) who initiate(s) a new level of sexual activity is responsible for asking for consent;
- A current or previous dating or sexual relationship with the initiator (or anyone else) does not constitute consent;
- Being intoxicated does not diminish one's responsibility to obtain consent;
- Bodily movements and non-verbal responses such as moans are not consent;
- Silence, passivity, or lack of active resistance is not consent;
- Intentional use of alcohol/drugs does not imply consent to sexual activity;
- Seductive dancing or sexy/revealing clothing does not imply consent to sexual activity;
- Anyone under the age of 16 cannot give consent;
- Use of agreed upon forms of communication such as gestures or safe words is acceptable, but must be discussed and verbally agreed upon by all parties before sexual activity occurs.

INCAPACITATION

Incapacitated persons cannot give consent. One who is incapacitated as a result of alcohol or other drug consumption (voluntarily or involuntarily), or who is unconscious, unaware, or otherwise helpless, is incapable of giving consent.

One must not engage in sexual activity with another whom one knows (or should reasonably know) to be incapacitated. Physically incapacitated persons are considered incapable of giving effective consent when they lack the ability to appreciate the fact that the situation is sexual, and/or cannot rationally and reasonably appreciate the nature and extent of that situation.

Examples of incapacitation include:

- unconscious,
- sleeping,
- frightened,
- physically or psychologically pressured or forced,
- intimidated,
- threatened.

Incapacitation can also result from:

- a psychological health condition,
- a physiological health condition,
- voluntary intoxication,

- involuntary use of any drug, intoxicant or controlled substance.

SEXUAL HARASSMENT or GENDER BASED HARASSMENT

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other harassing conduct of a sexual nature whether intentional or not. The unwanted conduct can be verbal, non-verbal, graphic, gestures, or physical. Sexual harassment occurs when the conditions for (1) and/or (2), below, are present:

Gender Based Harassment includes harassment based on gender, sexual orientation, or gender identity which may include acts of intimidation, aggression, or hostility, whether verbal, non-verbal, graphic, physical or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions for (1) and/or (2), below, are present:

(1) **QUID PRO QUO: *This for That***

- Submission to the unwelcome conduct is made either explicitly or implicitly a term or condition of an individual's employment or status in a course, program, or activity; or
- Submission to or rejection of the unwelcome conduct by an individual is used as the basis for an academic or employment-related decision affecting such an individual; or

(2) **HOSTILE ENVIRONMENT:**

- The unwelcome conduct of is sufficiently severe, persistent, or pervasive as to substantially limit or interfere with an individual's work, educational performance, participation in extra-curricular activities, or equal access to the University's resources and opportunities; or
- Such contact, act or acts that creates an intimidating, hostile, or abusive living, working, or educational environment.

SEXUAL ASSAULT

Sexual assault is any type of sexual conduct or contact that occurs without the explicit consent of the recipient.

Non-consensual sexual contact is

- any intentional sexual touching,
- however slight,
- with any object or body part,
- by a person of any gender, age or sexual orientation,
- that is without consent.

Non-consensual sexual penetration is

- any sexual penetration (anal, oral, vaginal),
- however slight,
- with any object or body part,
- by a person of any gender, age or sexual orientation,
- that is without consent.

SEXUAL EXPLOITATION

Sexual exploitation occurs when a person takes non-consensual or unjust sexual advantage of another for their own advantage or benefit, or to benefit another person than the one being exploited.

Examples of sexual exploitation include, but are not limited to:

- non-consensual video, photographing, or audio-taping of sexual activity;
- non-consensual distribution of a video, photograph, or sound recording of sexual activity;
- non-consensual photographing of nudity;
- non-consensual distribution of a nude photograph;

- going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- engaging in peeping or indecent exposure;
- inducing incapacitation through alcohol or drugs in order to sexually assault another person (whether or not sexual contact actually takes place); an example could include spiking someone's drink.

STALKING

Stalking is defined as engaging in a course of conduct directed at a specific person(s) that would cause a reasonable person to – (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Cyberstalking is a form of stalking where a person engages in a course of conduct using applications (apps), e-mail, texts or other electronic communications to pursue or track another person that would cause a reasonable person to – (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Stalking can include:

- unwanted phone calls
- unwanted letters, e-mails, social media messages (e.g. Twitter, Facebook, etc.) or other forms of communication/messaging
- unwanted or threatening gifts
- pursuing or following a person without their consent
- unwanted appearances at a person's residence, school, or work
- surveillance or other types of observation
- use of electronic devices or software to track or obtain private information

DATING VIOLENCE

Dating violence is defined as abuse committed by a person, past or present, involved in a social, sexual, or romantic relationship with the victim. Dating violence can include a range of behaviors that may include physical violence, sexual violence, emotional violence, and economic violence.

Dating Violence can include:

- physical assault (such as shoving, kicking or punching)
- verbal abuse (such as belittling or calling names)
- controlling behavior (such as not letting the victim see friends)
- sexual abuse (such as forced kissing, hugging or sexual contact)
- psychological abuse (such as threatening to hurt the victim or family or friends, or instill fear)

DOMESTIC VIOLENCE

Domestic violence is defined as abuse committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse or someone similarly situated to a spouse, or by any other person from whom the victim is protected under the domestic or family violence laws.

Domestic Violence can include:

- physical assault (such as shoving, kicking or punching)
- verbal abuse (such as belittling or calling names)
- controlling behavior (such as not letting the victim see friends and/or family, telling the victim what to wear)
- sexual abuse (such as forced kissing, hugging or sexual contact)
- psychological abuse (such as threatening to hurt the victim or family or friends, or instill fear)

MEDICAL CARE and EVIDENCE COLLECTION

An individual who has been the victim of sexual violence is urged to seek medical care as soon as possible. Even if a victim doesn't want to report the assault, medical attention is still needed to check for injuries, sexually transmitted infections, or pregnancy.

Victims of sexual assault are strongly encouraged to undergo a forensic examination by a trained professional to ensure proper medical attention. Victims who undergo evidence collection do not have to press charges.

In addition to receiving proper medical attention, consider the following:

- Time is a factor in the collection of evidence. Post-assault forensic evidence (commonly referred to as a "rape kit") is best collected within 72 hours of the assault. Victims should go to the hospital as soon as possible after the assault.
- A Crime Victim Advocate from the Crime Victims' Center of Chester County can accompany the victim to the hospital to provide support and answer questions on what to expect. To obtain an advocate, call 610-692-7273. The Hospital Emergency room will contact Crime Victims' Center, if desired.
- Victims should not bathe or douche as this will destroy evidence that supports a legal case against a accused.
- The hospital will keep the clothes worn during the assault as evidence. Victims should bring a change of clothes to the hospital, or take the clothes he/she was wearing during the assault in a brown paper bag to the hospital.
- If the use of a "date rape drug" is suspected, the hospital can take a urine sample for evidence collection.
- For more information about evidence collection go to: www.rainn.org/get-information/sexual-assault-recovery/rape-kit.

Post-assault forensic evidence collection is not available at Student Health Services. Victims should use a local hospital such as Chester County Hospital, Brandywine Hospital, or Paoli Hospital for comprehensive medical care after an assault. The Department of Public Safety (610-436-3311) will assist with transportation to the hospital if needed. Or in cases requiring urgent care, contact local emergency services by calling 911.

Hospital Contact Information:

Brandywine Hospital: 201 Reeceville Road, Coatesville, PA,
PH. 610-383-8000

Chester County Hospital: 701 E. Marshall Street, West Chester, PA, PH. 610-431-5000

Paoli Hospital: 255 W. Lancaster Avenue, Paoli, PA, PH. 484-565-1000

Medical attention does not need to occur at a hospital when forensic evidence is no longer available or if the assault happened more than 72 hours ago. The victim may seek care at Student Health Services, the local Planned Parenthood of Chester County, or from a private physician or gynecologist.

Student Health Services (Commonwealth Hall, PH. 610-436-2509) offers gynecological exams, pregnancy tests, emergency contraception, HIV tests, and sexually transmitted infection tests. Student Health Services will cover the costs of standard post-assault medical care at the Health Center free of charge. The hospital services will be charged to the students' insurance if they do not file a police report.

HOW AND WHERE TO REPORT AN INCIDENT OF SEXUAL MISCONDUCT

West Chester University strongly encourages prompt reporting of sexual offenses to the police but recognizes that people who experience sexual misconduct have the right to decide whether to file a criminal report with the police, a complaint with the University, an anonymous report, or no report at all.

Here are a few things to know about filing a report:

- Anyone can file a report whether they are a victim, witness, or concerned third party.
- Victims have the option to file both a criminal report with the police and a report with the University (wcupa.edu/sexualmisconductreport).
- Filing a report does not mean that you have to be involved in a police investigation or talk to the accused.
- A victim has the right to request a victim advocate to go with them when filing a report with the police or with the University. Call the Crime Victims' Center of Chester County to request a victim advocate (610-692-7273).
- A victim can also contact the Campus Sexual Misconduct Advocate for information and assistance in reporting on-campus; you can contact them directly at 610-436-0732.
- The intentional filing of a false report will not be tolerated. It is a violation of the Student Code of Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal laws and civil defamation laws.

If you have any questions the offices or staff members listed in the *On-Campus Resources* section of the policy can offer information and support. Choose any office with whom you feel most comfortable.

Amnesty and Reporting:

- A victim or witness who is under the influence of alcohol or drugs at the time of a sexual misconduct incident generally will not face disciplinary charges from the University or from the Department of Public Safety for underage drinking or drug use.

To file a police report:

Those who want to press criminal charges against an accused(s) should contact the Department of Public Safety (610-436-3311), dial 911, or contact the police in the area where the assault took place. Criminal charges can be filed against any type of accused, including non-WCU members. Criminal charges of sexual assault are entirely separate from violations of the Student Code of Conduct, which only applies to WCU students. Filing a formal report with the police is necessary when a victim would like to initiate a criminal investigation by the police. Anyone who has been sexually assaulted may choose to pursue both criminal prosecution and university disciplinary processes. If the incident occurred off-campus, the WCU Public Safety will assist the complainant in filing the complaint in the appropriate jurisdiction.

To file a complaint for Title IX violation/Student Conduct Report:

Sexual misconduct is a form of sex discrimination prohibited by Title IX of the Education Amendments of 1972. A Title IX investigation is separate from a criminal investigation by the police and courts. Victims of any form of sex discrimination, sexual misconduct or gender-based harassment are encouraged to report the incident to the Title IX Coordinator/Social Equity Director:

- Lynn Klingensmith, Title IX Coordinator/Social Equity Director
13/15 University Avenue
lklingensmith@wcupa.edu
610-436-2433

Sexual misconduct is a violation of the Student Code of Conduct, and as such a victim may make a conduct complaint against a WCU student(s). A conduct hearing is separate from a criminal investigation by the police. An accused can receive punishment up to and including expulsion from the University. The conduct process occurs after the Title IX fact finding investigation. Student Conduct Contact:

- Christina Brenner, Director - Office of Student Conduct

Sykes Student Union, Room 238
cbrenner@wcupa.edu
610-436-3511

To file an anonymous report:

The University strongly encourages those who want to file a report on behalf of themselves or someone else to identify themselves by name, but anonymous reports will be accepted by anyone with knowledge of a sexual misconduct violation.

Anonymous reports can be filed in a couple of ways.

- Submit a Sexual Misconduct Incident Report Form (see below for more information on this form) online at www.wcupa.edu/sexualmisconductreport. If you cannot complete the form online please contact Lynn Klingensmith, Title IX Coordinator/Social Equity Director, Office of Social Equity, 13/15 University Avenue, West Chester University, West Chester, PA 19383, 610-436-2433 or lklingensmith@wcupa.edu.
- Call the Anonymous Crime Tip Line operated by the Department of Public Safety at 610-436-3100.

Expectation of Reporting for University Employees:

Additionally, University employees without statutory privilege are required to report any incident of sexual misconduct that they witness or that is reported to them and provide the name of the victim to the Title IX Coordinator/Social Equity Director. Employees who hold confidentiality exemption are not required to provide the name or any identifying information of the victim, but do still need to report the incident to the Title IX Coordinator/Social Equity Director. In instances when the name has been reported, the Title IX Coordinator/Social Equity Director will speak with the victim to ensure that they are aware of available resources, services, and interim safety measures to assist with the physical and emotional aftermath of the incident; advise the victim of the complaint filing options; and take any necessary steps to ensure the safety of the West Chester University community. If the victim speaks to an employee with confidential exemption, that employee will act on behalf of the Title IX Coordinator/Social Equity Director and provide information about services, support and reporting the incident.

SEXUAL MISCONDUCT INCIDENT REPORT FORM

The Sexual Misconduct Incident Report Form is used to collect statistical information, which must be passed along to campus law enforcement for publication in the annual Campus Security Report as required by the Jeanne Clery Act. Such information helps to provide the community with a clear picture of the extent and nature of campus crime in order to ensure greater safety. No names or other personally identifying information is used in the Campus Security Report, which can be found on the Department of Public Safety website at www.wcupa.edu/dps/.

The Sexual Misconduct Incident Report Form can be filled out by a student, staff, faculty, community member, parent, or anyone with information to report. Those who have been identified as Campus Security Authorities (CSAs) should not fill out the Sexual Misconduct Incident Report Form. Instead, CSAs are required to submit an online Clery Act Report www.wcupa.edu/csa. If you have any questions about Campus Security Authorities (CSAs) or the Clery Act Report, please contact Chief Mike Bicking, Department of Public Safety, 610-436-3478.

Anonymous reports are used to collect information on instances of sexual misconduct. The information is useful for assessing the danger the incident represents to the community at large. In addition, information is also used for assessment purposes to ensure that WCU is maintaining a campus climate that is safe and supportive and providing adequate resources for students.

The University has a legal obligation to investigate anonymous reports of sexual misconduct to the extent feasible. It is not usually possible to conduct a formal investigation of anonymous reports of sexual misconduct, or in situations where a complainant requests confidentiality, or when a person making a report asks that the complaint not be pursued; however, the University has a responsibility to take action to prevent misconduct.

In the event of anonymous reports of sexual misconduct, or if the person making the report asks that the complaint not be pursued, the Office of Social Equity will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality, which may include meeting with the alleged harasser to provide notification of the allegations and the possible repercussions if a formal complaint is brought forward. The Social Equity Office may recommend voluntary sexual misconduct training for an individual or a work unit.

Sexual Misconduct Response Team (SMRT)

The SMRT is comprised of:

- Title IX Coordinator/Director of Social Equity
- Chief of Public Safety and a Public Safety detective
- Assistant Dean of Students
- Director of Student Conduct
- Assistant Director of Social Equity/Deputy Title IX Coordinator

The Title IX Coordinator/Social Equity Director convenes the SMRT when a report of sexual misconduct requires a coordinator response. The purpose of the meeting is to share information and coordinate the University support systems. Reports of sexual misconduct vary widely in the nature of the misconduct, the amount of information received, and how victims wish to proceed. It is important for each of the University representatives who have a role in the process to participate in the decision as to how best to proceed to assist and protect the victim while also providing for a safe campus community. In addition, the SMRT convenes to review changes in the legal landscape and update policies and procedures and to assist with information for the Clery Annual Campus Safety Reports.

CONFIDENTIALITY AND REPORTING POLICY

West Chester University understands the amount of strength and courage that is required to come forward and disclose a sexual misconduct. Be it harassment, assault, sexual exploitation, stalking or dating violence, WCU takes your right to privacy seriously. Because the safety of our students, faculty and staff is of our utmost concern, we are not always able to grant complete confidentiality in a sexual misconduct case, however, we will, to the extent possible, do our best to protect your privacy while meeting the University's legal obligations.

There are some resources that provide confidentiality on- and off-campus. They are as follows:

On-Campus:

- Campus Sexual Misconduct Advocate [610-436-0732]
- Center for Women and Gender Equity [610-436-2122]
- Counseling Center [610-436-2301]
- Student Health Services[610-436-2509]

Off-Campus:

- Crime Victims' Center of Chester County (CVC) [610-692-7273]
- Domestic Violence Center of Chester County (DVC) [1-888-711-6270]
- Rape, Abuse, and Incest National Network (RAINN) [1-800-656-4673]
- Pastors of local churches, synagogues, and mosques when acting in a pastoral role.

More information about these organizations can be found in the **Resources** section of the policy.

Under Title IX, the University has an obligation to investigate all incidents of sexual misconduct, and make victims aware of the resources available to them, while striving to respect the privacy and confidentiality of the victim. Consistent with this and related obligations under Title IX, the confidentiality of all parties to the complaint of sexual misconduct will be observed by University personnel to the extent possible. The University's obligation to protect the safety of its students and to record statistics may not permit complete confidentiality, but the University shall take the necessary measures to ensure that the information shared is limited to those individuals required to know pursuant to law, regulation or University policy. In life-threatening situations, confidentiality is not legally possible and University employees will contact emergency personnel immediately.

The University will not inform students' parents or guardians of their involvement in a situation involving sexual misconduct unless they are in major medical jeopardy. However, students are strongly encouraged to inform their parents or guardians. College officials will directly inform a student's parents or guardians only when requested to do so by the student.

All reported instances of sexual misconduct will be investigated promptly, thoroughly, and equitably with appropriate response taken to ensure a safe and nondiscriminatory environment for all students, faculty, and staff. The University will inform the victim before conducting an investigation and determining appropriate action to remedy a situation. A victim may request that no investigation take place or that their name not be disclosed to the accused during an investigation. These requests will be evaluated according to the severity of the situation and the threat that the accused(s) poses to the overall safety of the campus community. The University will notify the victim if and when confidentiality and/or compliance with their wishes cannot be guaranteed.

FEDERAL TIMELY WARNING REPORTING OBLIGATIONS

Victims of sexual misconduct should be aware that university administrators must issue timely warnings for incidents reported that pose a substantial threat of bodily harm or danger to members of the campus community. The University will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions for themselves.

UNIVERSITY DISCIPLINARY PROCEDURE

Any student or employee of West Chester University can file a complaint against a student or student organization for violations of the Student Code of Conduct on the basis of sexual misconduct at <http://www.wcupa.edu/sexualmisconduct>. Student Code of Conduct charges are entirely separate from a criminal investigation by the police, and any complainant may file a criminal complaint with police in addition to a Student Code of Conduct violation. Complaints can also be filed with the U.S. Department of Education, Office of Civil Rights by phone at 215-656-8541.

The intentional filing of a false report will not be tolerated. It is a violation of the Student Code of Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal laws and civil defamation laws.

INTERIM MEASURES

Interim measures can be provided to students by contacting the Title IX Coordinator/Social Equity Director who will work in conjunction with the Director of Student Conduct to implement.

Students may request some of the following:

- housing reassignment to ensure that victim/complainant and accused are not in close proximity;
- limitations on contact between parties (referred to as a "No Contact Directive");
- an escort to ensure the victim's safety;
- reassignment of classes to ensure that the victim and accused are not attending the same class,
- counseling services;
- medical services;
- academic support such as tutoring;
- to withdraw from a class without penalty;

- adjustments to on-campus transportation, parking, or work;
- Other remedies and/or measures not listed can be considered to ensure the safety of all involved parties in the case and the campus community.

RETALIATION

West Chester University prohibits retaliation against any person for using this reporting procedure, or for filing, testifying, assisting or participating in any investigation or proceeding involving allegations of sexual harassment or misconduct. Any retaliatory behavior should be reported immediately to the Title IX Coordinator/Social Equity Director or the Director of Student Conduct. Any person, including third parties, who violates this retaliation policy, will be subject to discipline, up to and including termination if they are an employee, and/or expulsion if they are a student.

NEXT STEPS: AFTER REPORT IS SUBMITTED

Once a sexual misconduct report is submitted the complainant will be contacted by the Title IX Coordinator/Social Equity Director (or designee) and determine if an investigation needs to be conducted. The Title IX Deputy Coordinator (or a designee), in some cases with a co-fact finder, will conduct a fact-finding investigation with all involved parties and witnesses. The fact finders are WCU staff and faculty who have received training from the Office of Social Equity. The investigation of a complaint will be conducted in a timely manner, and will be completed within fifty days unless there are extenuating circumstances based on the case. At the conclusion of the investigation, the fact finders prepare a report detailing the incident and their findings.

The Title IX Coordinator/Social Equity Director will, if appropriate (and will also consult with the victim/complainant, if needed) forward the case to the Office of Student Conduct for the disciplinary process.

The Title IX Coordinator/Social Equity Director will consult with the Director of Student Conduct for any cases that should necessitate bypassing the fact finding process and move immediately to the Student Conduct process.

DISCIPLINARY PROCESS

Once a fact finding report is received from the Office of Social Equity, the Director of Student Conduct will begin the next phase of the disciplinary process. A case may be heard by a hearing officer or it may be brought before a hearing board for a formal hearing.

If a formal hearing is scheduled, prior to the hearing, both the victim/complainant and the accused will be granted similar and timely access to any information that will be used at the hearing. They will have the opportunity to review any statements or reports that will be used during the hearing.

Involved students may want to include witnesses on their behalf. These names and contact information must be provided to the Office of Student Conduct no later than two days after receipt of the Notification of Conduct Board Hearing, so the witnesses can receive timely notification about the hearing. Additionally, witness information will be shared with the opposing party.

Conduct Hearing: The purpose of a hearing is to hear the facts and circumstances of the alleged incident and to accept all evidence offered by the victim and the accused. In determining whether a sexual misconduct violation has occurred, the conduct board applies a “**preponderance of the evidence**” standard. That is, the conduct board must determine if the testimony and evidence presented suggests that it is “more likely than not” that sexual misconduct has occurred.

A conduct board hearing is conducted by a University Conduct Board comprised of three member body (student, faculty, and/or staff), who have an equal vote in the outcome of the proceeding. All conduct board members receive specialized training in the areas of sexual misconduct. Each University conduct board is pre-screened on a case by case basis to eliminate familiarity with either the accused or the victim.

All hearings are closed proceedings, meaning that they are not open to the public. However, the victim and the accused have the right to have a support person accompany them. Support persons are not permitted to participate in the hearing process.

In addition to a **support person**, both the victim and accused have the right to be assisted at the hearing by **one advisor**, who may be an attorney. The advisor is not permitted to actively participate in the proceedings, and may only consult and interact privately with the student.

For sexual misconduct cases both parties are able to request the following:

- By prior request, a screen may be used to separate the victim and the accused.
- The accused, victim, and the Conduct Board all have the right to conduct reasonable questioning.
- All questions between the victim and the accused will be submitted in writing to the Chairperson who will then relay the question to the appropriate party.

The Conduct Board Chairperson is responsible for maintaining order and room decorum. The chairperson has the right to impose rules that are reasonable and necessary for an orderly and efficient hearing to take place. Any person who commits an action that interrupts the proceedings or refuses to comply with rules regarding behavior will be removed from the hearing.

The Conduct Board has the power to direct the time of entrance and exit of witnesses for all parties in the hearing. The Conduct Board has the right to determine the date, time, location, and length of a hearing.

All hearings will be recorded. Maintenance of a written or audiotape record of the hearing will be done at the University's expense, but students may be required to pay the cost of copies of requested records. Sensitive or confidential information will be taken out prior to the release of the record.

Hearing Procedure

1. The Conduct Board will open the proceedings by reading the statement of charges.
2. Before presenting any testimony, each party and witness must submit to an oath where they swear and affirm the truth of statements to be made.
3. The victim will then present their case against the accused. The presentation of a case will be done by the submission of written, physical, and testimonial evidence.
 - The accused and the Conduct Board have the right to conduct reasonable questioning of the victim and their witnesses.
 - During the victim's testimony, the accused may submit questions to the Conduct Board Chairperson, who will determine the appropriateness of questions.
 - By request, a screen may be used to separate the victim and the accused.
4. At the conclusion of the victim's presentation, the accused will present a response to the charges. This response will be done by the submission of written, physical, and testimonial evidence.
 - The victim and the Conduct Board have the right to conduct reasonable questioning of the accused and their witnesses.
5. At the close of the hearing, the Conduct Board may allow closing statements by both the victim and the accused, which may include rebuttal comments.

Failure to Appear: Any student or student organization who fails to appear at a scheduled conduct hearing consents to the conducting of the conduct hearing in their absence. The Conduct Board will be responsible for ensuring that each student is afforded due process during all conferences and hearings, whether or not the student is present. Should the student be suspended or expelled as a result, they may request a de novo hearing during the time of the appeal period as noted in the outcome letter.

Hearing Outcome: The outcome of the hearing will be based upon presented evidence sufficient to make a reasonable person believe that a fact sought to be proved is more likely true than not. All matters upon which the decision will be based must be introduced into evidence at the hearing.

The Chair of the Conduct Board will issue a written statement of the findings of fact and reasons for the decision (referred to a "Conduct Hearing Outcome Letter") to the victim and the accused within 30 business days after the close of the hearing.

SANCTIONS

In addition to testimony and evidence presented at a conference or hearing, a Conduct Board may consider the following elements before rendering a sanction:

- Severity of the violation;
- Academic records and class year;
- Previous discipline record including that which is public record;
- Attitude of the accused during the conference and/or hearing.

Sanctions include Disciplinary Reprimand, Disciplinary Probation, Deferred Suspension, Suspension or Expulsion. The sanction may also include an educational task that is designed to benefit the individual, campus, or community.

APPEALS

Upon receiving a sanction from the Conduct Board, the victim or the accused may appeal for the following reasons:

- Violations of conduct procedures;
- Severity of sanction is not supported by the evidence;
- Lack of substantial evidence upon which a determination of guilt can be based; and/or
- New evidence that was not previously available, and that might substantially change the nature of the case.

All appeals must be made in writing to the Director of Student Conduct within five business days from the exit date listed on the Sanction Assessment Form.

Appeal letters should explain in detail the basis of the request and include any supporting documentation. A student or student organization filing an appeal may include letters of character reference.

Upon receipt of the written appeal, the Director of Student Conduct will respond in writing within five business days of receipt of the appeal.

The Office of Student Conduct will also send the Outcome Letter to the victim and the Title IX Coordinator/Social Equity Director. Both parties involved in the case have the right to appeal, notification of a pending appeal from the opposing party, and the opportunity to provide an impact statement to the appeal board (impact statements should be submitted to the Director of Student Conduct to be shared with the appeals board).

Upon receipt of an appeal involving a sexual misconduct charged, sanctions will be deferred until the outcome of the appeal, any and all interim measures will remain in place until such time they are rescinded or modified by the Office of Student Conduct.

Cases involving the following sanctions will be sent to the University Appeals Board for review: loss of housing and/or dining privileges; suspension; and/or expulsion. All other cases will be reviewed by the Director of Student Conduct or designee to determine a final decision.

Appeals Board: Each Appeals Board is comprised of a three member body (faculty, staff, and/or student(s)). If necessary, an Appeals Board may be convened by a quorum. A quorum in this case would be a combination of at least two of the previously mentioned individuals. Each Appeals Board is selected from a pool of qualified applicants and pre-screened on a case by case basis to eliminate familiarity with either the accused or the victim.

All meetings and hearings of the Appeals Board are closed. The Appeals Board will review the written appeal and all documentation contained within the disciplinary file of the accused. The board may also review a victim's impact statement.

The Appeals Board is not obligated to convene an appeals hearing. However, if it should wish to do so, the Appeals Board will follow the same procedures used for the conduct hearing (See III.F. of the Student Code of Conduct).

By a simple majority vote, an Appeals Board can uphold the sanction, modify the sanction, or order a new hearing. All Appeals Board decisions are final and will be forwarded to the Director of Student Conduct for immediate implementation.

When it is not feasible for an Appeals Board to meet in a timely fashion (for example, during semester breaks), appeals will be reviewed by the Director of Student Conduct, whose recommendation will be forwarded to the Assistant Vice President for Student Affairs or designee for final decision.

Presidential Appeal: The victim or the accused may request the President of the University to review the Appeals Board decision. An appeal to the President must be presented in writing to the Office of Student Conduct within two University business days of formal notification of the Appeals Board decision.

An appeal to the President must include clear and convincing reasons to overrule the decision of the University Appeals Board. An appeal to the President should include information that supports the following reasons for the appeal:

- violations of conduct procedures;
- severity of sanction is not supported by the evidence;
- lack of substantial evidence upon which a determination of guilt can be based; and/or
- new evidence that was not previously available, and that might substantially change the nature of the case.

The President may or may not elect to review a decision. The student or student organization petitioning for the presidential appeal will be notified of the decision of the President, or designee, within a reasonable period of time. The presidential appeal is the final step in the WCU conduct process.

RESOURCES and SUPPORT

[Resources marked with a (+) are confidential]

ON-CAMPUS RESOURCES

If you have any questions about sexual misconduct or need help following an act of sexual misconduct, the following University offices and staff members can offer information and support. Choose any office or person with whom you feel most comfortable.

- **Campus Sexual Misconduct Advocate (+)** (610-436-0732, Office of Wellness Promotion, Commonwealth Hall, Room 12). The Campus Sexual Misconduct Advocate provides information on campus reporting, referrals, and provides supports to students who have been victimized by sexual misconduct. The Campus Sexual Misconduct Advocate also participates in campus sexual misconduct prevention education.
- **Center for Women and Gender Equity (+)** (610-436-2122, Lawrence 220) offers confidential assistance, resources, and referrals for those who are impacted by sexual assault or misconduct. The Center does not offer counseling services or medical services; instead they provide information on resources and support for the person.

The Center is available to students of all genders free of charge. Victims are welcomed at any time after an assault, whether it has been two days since the student was assaulted or two years. Friends or romantic partners of those who have been victimized are also welcome to visit the Center for assistance and resources.

The Center is staffed by a diverse group who are trained to handle matters of sexual misconduct with sensitivity. The Center is open from 8:00am until 4:00pm Monday through Friday.

- **Coordinator for Healthy Masculinities and Violence Prevention (+)** (610-436-2122, Lawrence 220). The Coordinator is located in the Center for Women and Gender Equity and is a resource on programming and interpersonal violence prevention work.
- **The Counseling Center (+)** (610-436-2301, Commonwealth Hall, Ground Floor) offers confidential counseling to students who have been sexually assaulted or victimized, whether recently or in the past. Counseling is also offered to those who have been accused or found guilty of sexual misconduct. All counseling is confidential. This means that the counselor cannot speak with others about the student's situation without the student's written permission.

The Counseling Center is staffed by male and female psychologists and trainees. Once the student has met with a counselor, together they decide a plan for treatment. Subsequent counseling sessions typically focus on providing emotional support, developing safety and coping skills, and understanding the impact of the sex offense in the student's life now. Since there is no "one way" to heal, the Counseling Center seeks to support the student through their individual healing process.

There are no fees for currently enrolled students to receive counseling. Visit the Counseling Center during triage hours to schedule an appointment. During this time you will complete an online assessment and meet with a psychologist for a short period of time to determine your level of care. Call the Counseling Center or visit their website to see the triage hour's schedule.

If a situation occurs after normal business hours, the on-call psychologist may be accessed by contacting Public Safety (610-436-3311); or, Crime Victims' Center of Chester County in West Chester staffs a 24-hour phone line (610-692-7273) that can provide immediate response and support.

- **Office for Student Conduct** (610-436-3511, Sykes 238) is responsible for enforcing violations of the Student Code of Conduct. The Director of Student Conduct offers assistance and guidance to students, staff, and faculty, including victims and the accused, in matters regarding sexual misconduct.

The Director of Student Conduct can:

- help file a police report
- advise the victim and/or the accused of their rights and options
- impose No Contact Directives to ensure the safety of all involved parties

- **Public Safety** (610-436-3311, 690 South Church Street) Public Safety is available 24 hours a day, 7 days a week. They are responsible for investigating crimes on-campus and are available to take reports related to sexual misconduct at any time of day.

Public Safety can:

- Take statements from victims
- Provide transportation for victims of sexual assault to area hospitals
- Help connect victims with local and campus services
- Help connect victims with local law enforcement that has jurisdiction over a particular case.

- **Student Health Services (+)** (610-436-2509, Commonwealth Hall, Ground Floor) offers confidential medical care and assistance for the victim of a sexual assault. Student Health Services is open Monday through Friday from

8:00am to 6:00pm. Scheduling an appointment is recommended but not required. For urgent medical care when Health Services is not open, please dial 911, go directly to the nearest emergency room, or call the Department of Public Safety (610-436-3311).

Nurse practitioners and physicians receive training to provide appropriate medical treatment and care, as well as discuss available services such as counseling and reporting. Student Health Services offers gynecological exams, pregnancy tests, emergency contraception, HIV tests, and sexually transmitted infection tests. All standard post-assault medical care will be free of charge.

Post-assault forensic evidence collection (commonly referred to as a “rape kit”) is not available at Student Health Services. However, nurse practitioners and physicians can help locate a medical provider who offers this service.

- **Title IX Coordinator/Social Equity Director** (610-436-2433, 13/15 University Avenue) offers assistance to students, faculty, or staff in matters regarding sexual harassment and sexual misconduct.

The Office of Social Equity can:

- discuss situations that may give rise to a complaint of sexual harassment or assault and provide options for addressing the situation
- conduct fact finding investigations into complaints of sexual misconduct
- investigate complaints of sexual harassment against University employees
- provide interim measures for issues of discrimination, sexual harassment, or sexual misconduct
- adjustments to on-campus transportation, parking, or work
- assist University personnel and students with questions about sexual misconduct policies and procedures.

In addition, the Title IX Coordinator/Social Equity Director monitors and oversees complaints of discrimination and harassment in compliance with federal regulations.

Additional On-Campus Resources

- **Department of Athletics** (610-436-3573, Sturzebecker HSC 220) The assistant director of Athletics has been selected by the Department of Athletics as the contact person to assist in situations that involve sexual misconduct. Students may choose to contact them for help with filing a report and/or locating appropriate resources such as medical care and counseling.
- **Lesbian, Gay, Bisexual, Transgender, Queer, Questioning, Ally Services** (610-436-3147, Sykes 238) offers support services for students who identify as lesbian, gay, bisexual, transgender, queer, questioning, and their allies.
- **Office of Fraternity and Sorority Life** (610-436-2117, Sykes 238) Students may choose to contact the Director, to help file a report and/or locate appropriate resources.
- **Office of Multicultural Affairs (OMA)** (610-436-3273, Sykes 003) offers a supportive environment for multicultural students at West Chester University. The OMA coordinates services, programs, and referrals that enhance the academic and personal development of students of color. In matters of sexual misconduct, the OMA provides support, information, and referral assistance to students.
- **Office of Residence Life** (610-436-3307, Lawrence 202) The Department of Residence Life and Housing Services has live-in staff available to students who have experienced sexual misconduct. The live-in staff includes Resident Directors (RD), Graduate Hall Directors (GHD), Graduate Assistants (GA), and Resident Assistants (RA)

who are trained to empower the victim. Staff members assist with room changes and other housing needs in collaboration with the Title IX Coordinator/Social Equity Director.

- **Office of Services for Students with Disabilities (OSSD)** (610-436-2564, Lawrence 223) Students may choose to contact the Director, to help file a report and/or locate appropriate resources.
- **On-Campus Legal Advice** is available by appointment during the fall and spring semesters. A student may make an appointment by logging onto their myWCU account and clicking the link at the bottom right side of the screen that says “Legal Advice.” During summer sessions, students in need of legal advice should contact Christina Brenner, Director of Student Conduct (610-436-3511, Sykes Student Union, Room 238).

OFF-CAMPUS RESOURCES FOR VICTIMS OF SEXUAL MISCONDUCT

In addition to the numerous services on campus, there are many additional services and organizations available for those who have been victimized by sexual misconduct.

- **Crime Victims’ Center of Chester County (CVC) (+)** is located at 135-137 W. Market Street. The CVC provides free and confidential support to members of the West Chester community who have been victimized. They offer include court and hospital accompaniment, and they assign an advocate to help victims, significant others, and family members through the entire process. They have a 24 hour hotline for sexual assault (610-692-7273). Their business hours are Monday through Friday 9:00am – 5:00pm.
- **Domestic Violence Center of Chester County (DVC)(+)** provides support for individuals and families who have been abused, physically or sexually, by someone whom they share a residency with, and/or with whom they have had an intimate relationship. DVC can assist with emergency shelter and long term housing needs for victims. They also provide a wide range of legal services, including help with obtaining a “PFA” (or Protection From Abuse order) and court accompaniment. They can be contacted on their 24 hour hotline at 610-431-1430.
- **National Center for Victims of Crime, Stalking Resource Center** provides information and resources for victims of stalking. The helpline number is 1-800-FYI-CALL. You can also visit their website at www.ncvc.org/src/Main.aspx.
- **Male Survivor** is an organization dedicated to providing support for male victims of sexual assault. Visit their website at www.malesurvivor.org.
- **The Network La Red** is an organization committed to supporting the lesbian, gay, bisexual, and transgender community with information on and resources about battered relationships. They can be reached on their hotline (617-742-4911). Or, visit their website at www.thenetworklared.org.
- **The Rape, Abuse & Incest National Network (RAINN) (+)** is a nationwide organization that provides free and confidential support for victims of sexual assault. They offer immediate crisis help and information about recovery. They can be reached on their hotline (1-800-656-HOPE), or by visiting their website and online hotline at www.rainn.org.

OFF-CAMPUS RESOURCES FOR STUDENTS ACCUSED OF SEXUAL MISCONDUCT

In addition to the numerous services on campus, there are many additional services available for those accused of sexual misconduct.

- **College Judicial Consultants** provides unwavering, judgment-free support throughout the judicial process and beyond. The professionals at College Judicial Consultants are former chief judicial officers and other student

services professionals who are experts in the college judicial process. They are committed to providing top-quality service and minimizing the cost to the client through nationwide, online services and other savings options. Reach them online at www.collegejudicialconsultants.com.

- **Legal Aid of Southeastern PA** offers legal aid and is located at 222 North Walnut Street, 2nd floor, West Chester, PA. Call 610-436-4510.
- **Human Services, Inc.** is located in Downingtown, PA at 520 E. Lancaster Avenue. Human Services provides an outpatient treatment program for people who have committed sexual offenses. Dr. Kevin Kirby, the director of the program, can be contacted directly at 610-873-1005 x162.
- **The Joseph J. Peters Institute** is located in Philadelphia at 100 S. Broad Street. The Institute provides therapy for male and female sex offenders. The program readily accepts individuals with strong self-motivation for treatment. Contact the Joseph J. Peters Institute by phone at 215-701-1560.
- **Menergy** is a counseling program located in Philadelphia for people who have been abusive to their intimate partners. The Menergy counseling and re-education program is an 8-month program that consists of individual and group therapy. Sliding Scale fees are available. Contact Menergy at 215-242-2235 (English) or 267-625-6135 (Spanish).

Revised: August 2016