

900.2 - SEXUAL MISCONDUCT & GENDER BASED HARASSMENT POLICY

Policy Statement

In accordance with the University's EEO and Non-Discrimination Policy, WSSU strictly prohibits discrimination and harassment based on an individual's Protected Class. Sexual Harassment and Sexual Violence are considered to be forms of sex discrimination. Sexual harassment by any member of the university is a violation of both law and university policy. Accordingly, no academic or personnel decisions, such as awarding of grades and jobs, shall be made based on the granting or denial of sexual favors.

This policy is intended to comply with Title IX of the Education Amendments of 1972 ("Title IX"), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as amended by the Violence Against Women Reauthorization Act of 2013 (VAWA), and Title VII of the Civil Rights Act of 1964, as they may be amended from time to time.

Beyond compliance, Winston-Salem State University ("WSSU" or "University") is committed to providing an environment that emphasizes the dignity, respect, and self-worth of every member of its community. With this commitment in mind, WSSU strongly condemns all forms of sex discrimination including sexual violence and promotes a community that is free of any form of sexual misconduct, which may include harassment, sexual violence, dating & domestic violence, and stalking.

Definitions

Sexual Harassment - Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct when: (1) submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment or academic advisement; (2) submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment.

Sexual Violence - Sexual harassment includes sexual violence, defined as "physical acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual may also be unable to give consent due to an intellectual or other disability. A number of acts fall into the category of sexual violence including rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX of the Education Amendments of 1972", (20 U.S.C §§ 1681 et seq., 34 CFR Part 106.)

Consent – for the purposes of this Policy, consent means words or actions demonstrating a knowing and voluntary agreement to engage in mutually agreed upon sexual activity. Consent cannot be obtained by force, by ignoring or acting in spite of the objections, or by taking advantage of the incapacitation of an individual. Silence or a lack of resistance is not consent. Consent to one sexual act does not constitute consent to any other sexual act.

Confidentiality - Confidentiality refers to the protections provided to information disclosed in legally protected or privileged relationships, including licensed professional mental health counselors, licensed medical professionals, and ordained clergy. These confidential resources can engage in confidential communications under the law when the information is disclosed within the scope of the provision of professional services. When an individual shares information with a confidential resource (on campus or in the community) as a confidential communication in the course of a protected relationship, the confidential resource cannot disclose the information (including information about whether an individual has received services) to any third party without

the individual's written permission, or unless required by ethical or legal obligations which compel the professional to reveal such information. For example, information may be disclosed when the individual gives written consent for its disclosure, there is an imminent concern that the individual will likely cause serious physical harm to self or others or poses a threat to the campus community as a whole, or the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18. Confidential resources submit non-personally-identifying information about Clery-reportable crimes to the Winston-Salem State University Police Department for purposes of the anonymous statistical reporting under the Clery Act.

Privacy -- Privacy refers to the discretion that will be exercised by the University in the course of any investigation or disciplinary processes under this policy. Information related to a report of Prohibited Conduct may be shared with a limited circle of University employees who need to know in order to assist in the assessment, investigation, and resolution of the report and related issues. University employees receive training in how to safeguard private information.

The University will make reasonable efforts to investigate and address reports of Prohibited Conduct under this policy, and information may be disclosed to participants in an investigation as necessary to facilitate the thoroughness and integrity of the investigation. In all such proceedings, the University will take into consideration the privacy of the parties to the extent reasonably possible. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA). The privacy of an individual's medical and related records generally is protected by the Health Insurance Portability and Accountability Act (HIPAA), excepting health records protected by FERPA. Access to an employee's personnel records is governed by the policy stated in the Employee Handbook. It is important to understand the different responsibilities of University employees. Every employee is designated as either a Confidential Employee or a Responsible Employee:

Confidential Employee - Confidential Employees include any employee who is a licensed medical, clinical, or mental-health professional (e.g., physicians, nurses, physician's assistants, psychologists, psychiatrists, professional counselors, and social workers, and those performing services under their supervision), when acting in that professional role in the provision of services to a patient; and any employee providing administrative, operational, and/or related support for such health care providers in their performance of such services. Confidential employees also include clergy and other religious or spiritual advisors when serving in their religious or spiritual capacity and any employee providing administrative, operational, and/or related support to clergy or other religious or spiritual providers. Confidential Employees will not disclose information about Prohibited Conduct without the individual's permission or as set forth in the Confidentiality section above. When individuals who otherwise may be Confidential Employees receive information outside of the provision of confidential services, the Confidential Employee is required to share that information with the Title IX Office.

Responsible Employee – With the exception of University employees designated as Confidential Employees, every individual employed by Winston-Salem State and anyone employed or retained under contract in a security or safety position or in a University residence hall is considered a Responsible Employee. ALL Responsible Employees are required to report any information regarding a known or suspected violation of this policy to a Title IX Officer as soon as the Responsible Employee learns of it, no matter how they learn of this information.

Student workers are also considered Responsible Employees when they learn of potential violations of this policy in the scope of their employment. Student workers who are Responsible Employees include but are not limited to resident assistants, teaching assistants, graduate assistants, and tutors provided through any University programs or offices.

Responsible Employees must report all information that they have obtained, including the identities of the parties, the date, time, and location, and any details about the reported incident to the Title IX Office. Responsible Employees cannot promise confidentiality or withhold

information about Prohibited Conduct. Failure by a Responsible Employee to report information regarding possible Prohibited Conduct in a timely manner may subject them to appropriate discipline. Responsible Employees are not required to report information disclosed at public awareness events (e.g., “Take Back the Night,” candlelight vigils, protests, “survivor speak-outs,” or other public forums in which students may disclose Prohibited Conduct). The University may provide information about Title IX rights and available University and community resources and support at public awareness events.

Clery Act Reporting - Pursuant to the Clery Act, the University includes statistics about certain offenses in its annual security report, and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Clery Act also requires the University to issue timely warnings to the University community about certain crimes that have been reported and which may continue to pose a serious or continuing threat to campus safety. Consistent with the Clery Act, the University withholds the names and other personally identifying information of Complainants when issuing timely warnings to the University community.

Guidelines

Employees are cautioned that where a power differential exists, i.e., faculty-student, supervisor-employee—if a charge of sexual harassment is brought, the defense of mutual consent may be difficult to prove. The University reserves the right to determine whether to pursue violations of policy by students or employees, including a complainant or witness, which become known during an investigation of an incident of sexual harassment.

In determining whether alleged conduct constitutes Prohibited Conduct under this policy, the University will look at the entire record as a whole and consider the totality of the circumstances. This inquiry will examine information such as the nature of the conduct and the context in which the alleged incidents occurred. All determinations regarding whether a Respondent has engaged in Prohibited Conduct will be based upon a thorough and comprehensive review of the facts, and made on a case-by-case basis utilizing the preponderance of the evidence standard. Issues of privacy and confidentiality play important roles in this policy and may affect individuals differently. While they are closely related, the concepts of privacy and confidentiality are distinct terms that are specifically defined in this policy.

Reporting Options

Any applicant, current or former employee, or student wishing to report an incident that violates this Policy should refer to the Resolution Procedures for Sexual Harassment and Sexual Violence, or contact the EEO/AA & Diversity Officer and Title IX Coordinator, at 336-750-8759, 115 Blair Hall. Any employee that is made aware of an allegation of sexual harassment or sexual violence is required to report it to the Title IX Coordinator, with the exception of licensed counselors and psychologists at the University Counseling Center. Failure to report an allegation of sexual harassment or sexual violence may result in disciplinary action, up to, and including dismissal.

Private vs. Confidential Reporting Resources

Under this Policy, privacy generally means that information related to a report under this Policy will only be shared with those University employees who “need to know” in order to assist in the active review, investigation, or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process. By contrast, confidential reporting resources will NOT disclose individually identifiable information related to a report without the individual’s express written permission, unless there is a continuing threat of serious harm to the patient/client or to others or there is a legal obligation to reveal such information (e.g., where there is suspected abuse or neglect of a minor). University reporting resources include:

1. Licensed University Counselors (**Confidential**)
The Counseling Center
A.H. Ray Student Health Services
Winston-Salem State University
601 Martin Luther King Jr. Dr. Suite 244
Winston-Salem, NC 27110
336-750-3270
2. Office of Interpersonal Violence Prevention
Director of Interpersonal Violence Prevention
301- H Thompson Student Center
601 Martin Luther King Jr. Dr. Suite 244
Winston-Salem, NC 27110
336-750-3313
3. Office of EEO/AA & Diversity/Title IX
Ms. Director of EEO/AA & Diversity Officer & University Title IX Coordinator
115 Blair Hall
601 Martin Luther King Jr. Dr.
Winston-Salem, NC 27110
336-750-8759
ContactEEO@wssu.edu
4. Office of EED/AA & Diversity/Title IX
Deputy Title IX Coordinator
115 Blair Hall
601 Martin Luther King Jr. Dr.
Winston-Salem, NC 27110
336-750-8760
ContactTitleIX@wssu.edu
5. Winston-Salem State University Campus Police
Old Maintenance Public Safety Building
601 Martin Luther King Jr. Dr.
Winston-Salem, NC 27110
336-750-2900 (non-emergency)
336-750-2911 (emergency)

External Reporting

University community members may raise concerns about the University's application of Title IX or Title VII with the United States Department of Education, Office for Civil Rights ("OCR"). The address and telephone number of the appropriate OCR District are as follows:

U. S. Department of Education
Office for Civil Rights
District of Columbia Office
400 Maryland Avenue, S.W.
Washington, D.C. 20202-1475
Telephone: (202) 453-6020
FAX: (202) 453-6021
TDD (877) 521-2172

Coordination with Policies and Process

This policy addresses discrimination on the basis of sex or gender as it relates to sexual and gender-based harassment and sexual assault, and other forms of interpersonal violence defined in more detail below. Other forms of sex discrimination (not based on harassment or violence),

and discrimination and harassment based on race, color, nationality or ethnic origin, sex, age, or disability are governed by the Winston-Salem State University Policy and Procedure on Equal Opportunity in Employment and Education Program and Activities. In addition, the conduct of students, employees, and faculty are governed or impacted by the following university policies and procedures:

- Student Code of Conduct
- Students Privacy Rights Policy (FERPA)
- Clery Act Disclosure Policy (200-004)
- SHRA Guidelines
- EHRA (Non-Faculty) Guidelines
- Sexual Misconduct Process & Procedures

Applicability

The policy applies to all faculty, students, and staff of Winston-Salem State University.

Compliance

This policy is maintained by the Office of Equal Employment Opportunity and Title IX and reviewed on an annual basis. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties, and assessing the effectiveness of the resolution process, including but not limited to, the fairness of the process, the time needed to complete the process, and the sanctions and remedies imposed.

False Reporting Statement

The sexual harassment policy is designed to encourage students, faculty, and staff to express freely, responsibly, and in an orderly way their opinions and feelings about any problem or complaint of sexual harassment. The university takes allegations of sexual harassment and sexual violence very seriously and recognizes the consequences such allegations may have on a respondent as well as the complainant. Any individual who knowingly provides false information regarding the filing of a complaint or report of sexual harassment/violence during an investigation of such a complaint or report may be subject to discipline or under certain circumstances, legal action. Complaints of conduct that are found not to violate policy are not assumed to be false. Any act by a university employee or agent of retaliation, reprisal, interference, restraint, penalty, discrimination, coercion or harassment-overtly or covertly-against a student or an employee for using the policy, will necessitate appropriate and prompt disciplinary action.

William U Harris, Chair
Board of Trustees
Winston-Salem State University

Scott F. Wierman, Secretary
Board of Trustees
Winston-Salem State University
Responsible Division: Vice Chancellor and Chief of Staff
Authority: Chancellor
History:

- Adopted December 19, 2014
- Revised March 16, 2018