

WILKES COMMUNITY COLLEGE PROCEDURE

POLICY NUMBER: 7.07A

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DATE ADOPTED: November 3, 2015

REVISED: July 17, 2018

TITLE: SEXUAL MISCONDUCT, PROHIBITED RELATIONSHIPS & NON-RETALIATION

I. INTRODUCTION

A. Title IX Coordinator and Deputy Coordinators

The Director of Human Resources is the college's Title IX Coordinator. The Deputy Coordinators are the

- Dean of Student Services and
- Dean of College and Career Readiness.

The Title IX Coordinator and Title IX Deputy Coordinators are responsible for implementing and monitoring Wilkes Community College's Title IX compliance as well as investigating possible Title IX violations.

When concerns are brought to the attention of a Title IX Deputy Coordinator or the Title IX Coordinator or when there is suspicion that sexual misconduct may be present, the Coordinators are bound to initiate and oversee timely investigations and provide updates to the reporting party and the respondent. For the purposes of this procedure, reporting party refers to the individual reporting a sexual misconduct policy violation. Respondent refers to the individual who is alleged to have committed a violation of the sexual misconduct policy. Initial investigations into a report must be completed within 60 days from the date of the report; therefore all individuals involved are expected to cooperate fully, truthfully, and expediently with an investigation.

B. Conflicts

If a Title IX Deputy Coordinator is named as a respondent, then the Title IX Coordinator or their designee will perform such person's duties under these procedures. If the Title IX Coordinator is named as a respondent, the Senior Vice President of Finance and Administration will appoint a college administrator to perform the duties of the Title IX Coordinator. If the Senior Vice President of Finance and Administration, Vice President of Instruction or Vice President of Instructional Support and Student Services is named as a respondent, the College President will appoint another college administrator to perform their duties. If the College President is named as a respondent, the Title IX Coordinator will complete the investigation and submit the findings to the Personnel Committee of the Board of Trustees. The Personnel Committee will meet with the full board and can elect to use a third party to further investigate the allegations. Upon conclusion of the investigation, the board shall in a timely manner inform the parties in writing of its determination.

II. WHO TO CONTACT

If a student or employee thinks they might have been a victim of sexual misconduct, knows of its

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existence in any of our education programs or activities, seeks to report an incident of sexual misconduct, or has any questions about the sexual misconduct policy, help can be sought from any of the offices or individuals below:

- **Faculty or staff:** Contact the Director of Human Resources, your supervisor, or Campus Police;
- **Students:** Contact the Dean of Student Services, Dean of College and Career Readiness, or Campus Police; and
- **Visitors, applicants for employment:** Contact the Director of Human Resource or Campus Police.

Individuals filing sexual misconduct reports are urged to do so as soon as possible. One option is to file a report online through www.wilkescc.edu/prevent. Individuals should recognize that delays in reporting may significantly impair the ability of the college officials to investigate and respond to such reports.

III. REPORTING PARTY RIGHTS AND ASSISTANCE/SUPPORT

A. Reporting Party Rights

Students reporting victimization will be provided with their written rights to:

1. Be assisted by campus authorities if reporting a crime to law enforcement;
2. Change the academic and working situations of any reporting party if requested and reasonably available, whether or not a formal report is made;
3. Notify the reporting party of their right to obtain or enforce a no contact directive, restraining order, or protection order;
4. Have a clear description of WCC's disciplinary process, including a detailed timeline for each stage of the disciplinary process, the range of possible sanctions, and the requirement to conclude the investigation within 60 days; and
5. Notify the reporting party of campus and community resources including contact information.

B. ASSISTANCE/SUPPORT

WCC is committed to providing a reporting party with the following forms of assistance and support upon request:

1. WCC-issued order of no contact against respondent(s) if they are also a student at WCC;
2. Referral to a community resource which works with survivors of sexual violence;

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3. Referral information about resources for medical and/or psychological support;
4. Reasonably available changes to a student's academic situation;
5. Change in on-campus work schedule;
6. Limited respondent access to WCC facilities and activities; and
7. Additional safety assistance or support requested by reporting party that is reasonably available.

For assistance and support, please contact the Title IX Coordinator or a Title IX Deputy Coordinator.

IV. INVESTIGATION

A. Evidence Collection

During the investigation, the Coordinator or a Deputy Coordinator shall meet with the reporting party and the respondent and give each an opportunity to provide evidence and potential witnesses.

WCC encourages reporting parties to consider preserving any evidence of the incident(s). The investigation of any reported sexual misconduct may entail the following:

1. Interviewing the reporting party: The reporting party may be interviewed once or more than once depending on the investigator's need to ask follow-up questions after collecting additional evidence;
2. Interviewing the respondent;
3. Interviewing other witnesses identified by either the reporting party or respondent; and
4. Collecting and reviewing evidence which might corroborate the recollection of either the reporting party or respondent. This might include, but is not limited to:
 - a. Text messages
 - b. Emails
 - c. Social media posts
 - d. Phone records
 - e. Letters
 - f. Voicemails
 - g. Pictures
 - h. Medical records
 - i. Court records
 - j. 911 calls
 - k. Off-campus law enforcement records

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B. Reporting party and Respondent Rights

Both the reporting party and the respondent have the following rights in the process:

1. Notice of the investigation to both parties;
2. An opportunity for both parties to present witnesses and other evidence, including a description of the types of evidence that may or may not be presented, including but not limited to:
 - a. prohibiting questioning or evidence about the reporting party's prior sexual conduct with anyone other than the alleged perpetrator and
 - b. clarifying that evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual misconduct.
3. An opportunity to be accompanied by an advisor of the individual's choosing, including an attorney. The college restricts the advisor's participation in the process to accompanying the reporting party or the respondent to scheduled meetings that are part of the investigation. Meetings may not be recorded and cell phones are prohibited in all meetings;
4. Notification of available campus and community resources;
5. Extension of any other rights given to the respondent to the reporting party; and
6. Written notice of the outcome of the investigation and appeal, if applicable. The written notice will include the alleged policy violation, the decision and any sanction rendered, if applicable, and the rationale.

C. Additional Guidelines

The college reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect the individuals' rights and personal safety. The Coordinator or a Deputy Coordinator may implement temporary measures in order to facilitate an efficient and thorough investigation process as well as to protect the rights of all parties involved.

For employees, the temporary actions include, but are not limited to, the following: reassignment of office, duties, or position; suspension; or directives that may include no contact between the two parties.

For students, such measures include, but are not limited to, modification of class schedule, interim suspension from campus pending the completion of the investigation, and reporting the matter to the local police.

In campus investigations, legal terms like "guilt," "innocence," and "burdens of proof" are not applicable. College personnel never assume a student is in violation of college policy. Campus

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investigations are conducted to take into account the totality of all evidence available, from all relevant sources. The standard of proof for all allegations of sexual misconduct will be preponderance of evidence as mandated by the U.S. Department of Education's Office for Civil Rights, which means that there is greater than a 50% chance, based on all reasonable evidence, that the respondent is responsible for the alleged violation.

D. Notification Process

To the extent possible, the college will keep all information relating to the report and the investigations confidential. However, to maintain compliance with the Clery Act, both parties will be informed of the outcome of any institutional proceeding alleging sexual misconduct.

The reporting party will be immediately notified that he or she has the right to seek additional assistance from law enforcement and has the right to seek, among other things, judicial no-contact, restraining and protective orders.

E. Time Frame

The investigating Coordinator or Deputy Coordinator will make every effort to conclude the investigation within sixty (60) days. If the nature of the investigation requires more time, the investigating Coordinator or Deputy Coordinator may have an additional thirty (30) days to complete the investigation. The investigating Coordinator or Deputy Coordinator will notify the parties of this extension.

V. SANCTIONS

Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the college reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. The college will consider the concerns and rights of both the reporting party and the respondent.

A. Students

Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous college conduct code or policy violations.

Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Intercourse will likely face a recommended sanction of suspension or expulsion.

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Any student found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous college conduct code or policy violations.

B. Employees

Any employee found responsible for violating the policy on Non-Consensual or Forced Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from suspension to termination.

Any employee found responsible for violating the policy on Non-Consensual or Forced Sexual Intercourse will likely face a recommended sanction of termination.

Any employee found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to termination, depending on the severity of the incident, and taking into account any previous college conduct code or policy violations.

WCC reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior.

Neither the review board nor any administrator who is responsible for determining sanctions will deviate from the range of recommended sanctions unless compelling justification exists to do so.

VI. GROUNDS FOR APPEAL

A. Students

For students, the investigating Coordinator will turn over the information gathered during the investigation to a three-member review board that is chaired by the Vice President of Instructional Support and Student Services. The other two members of the review board will be drawn from a pool of board members approved by the President. The review board will determine what, if any, actions will be taken. Both the reporting party and respondent will be provided an opportunity to share their perspective directly with the review board. Should either party choose to appeal the decision of the review board, a written notice of appeal must be filed with the Vice President of Instruction. An appeal of the review board's decision shall be limited to a review of the investigation and supporting documents, as indicated below, to determine if proper procedure was followed:

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1. To determine whether the investigation was conducted fairly in light of the allegations and information presented, and in conformity with prescribed procedures. Deviation from designated procedures will not be a basis for sustaining an appeal unless significant prejudice results;
2. To determine whether the decision reached regarding the respondent was based on preponderance of the evidence; that is, more likely than not, a violation of college policy occurred;
3. To determine whether the sanction(s) imposed were appropriate for the violation of college policy which the respondent was found to have committed; and/or
4. To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original investigation, because such information and/or facts were not known to the person appealing at the time of the original investigation.

The appeal must be filed within three school days of the review board's decision being made known. The Vice President of Instruction will conduct the process of investigating an appeal of the review board. The investigation shall begin within three school days after receiving the notice of appeal.

The Vice President of Instruction will follow the same procedure in reviewing the case as the review board. The decision of the Vice President of Instruction will be final.

B. Employees

For employees, the investigating Coordinator will turn over the information gathered during the investigation to the Senior Vice President of Finance and Administration. The Senior Vice President of Finance and Administration will determine what, if any, actions will be taken. Should either party choose to appeal the decision of the Senior Vice President of Finance and Administration, a written notice of appeal must be filed with the President. An appeal of the Senior Vice President's decision shall be limited to a review of the investigation and supporting documents, as indicated below, to determine if proper procedure was followed:

1. To determine whether the investigation was conducted fairly in light of the allegations and information presented, and in conformity with prescribed procedures. Deviation from designated procedures will not be a basis for sustaining an appeal unless significant prejudice results;

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2. To determine whether the decision reached regarding the respondent was based on preponderance of the evidence; that is, more likely than not, a violation of college policy occurred;
3. To determine whether the sanction(s) imposed were appropriate for the violation of college policy which the respondent was found to have committed; and/or
4. To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original investigation, because such information and/or facts were not known to the person appealing at the time of the original investigation.

The appeal must be filed within three school days of the Senior Vice President of Finance and Administration's decision being made known. The President will conduct the process of investigating an appeal of the Senior Vice President's decision. The investigation shall begin within three school days after receiving the notice of appeal.

The President will follow the same procedure in reviewing the case as that of the investigating Coordinator. The decision of the President will be final.