

# Sexual Misconduct Policy and Procedures

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*Addendum to the Student and Employee Handbooks and the Faculty Manual*

**Issued By:** President's Cabinet  
**Replaces:** Sexual Misconduct Policy of 2016  
**Approved By:** President's Cabinet  
**Effective Date:** March 11, 2019

Note: This policy does not take the place of policies in the Student Handbook, Employee Handbook, and Faculty Manual. This addendum gives added clarity to current policies that come alongside Asbury's longtime commitment to a safe and healthy community for students, faculty, and staff.

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## **Introduction**

Asbury University prohibits all forms of sex discrimination, including sexual misconduct as described in this policy. The University is committed to addressing sexual misconduct in a manner consistent with applicable law. Asbury University also is committed to raising awareness of issues relating to sexual misconduct and its prevention, providing training and continuing education for students, staff, and faculty, and providing adequate resources for prompt assistance to victims of sexual misconduct.

Specifically, it is the policy of Asbury University that designated faculty and staff members take immediate and appropriate steps to investigate and take action when the University knows, or reasonably should know, of possible sexual misconduct. When sexual misconduct is determined to have occurred, the University shall take prompt and effective steps to end the misconduct, prevent its recurrence, and, as appropriate, remedy its effects. All complaints shall be processed in accordance with the procedures established in this policy.

It is also the policy of Asbury University to protect any student, faculty, or staff member filing a complaint alleging sexual misconduct and to ensure that person's safety as necessary, including taking interim steps to protect the person prior to the final outcome of any inquiry or investigation.

Asbury University is committed to resolving complaints promptly and equitably and to providing a safe and nondiscriminatory environment for all students, faculty, and staff members, free from sexual misconduct.

## **Nondiscrimination Statement**

Asbury University does not discriminate on the basis of race, color, gender, age, national or ethnic origin, or disability in the admission of students, educational policies, and programs, employment policies, and activities. In addition, Asbury University does not discriminate on the basis of religion in the admission of students and student access to educational programs.

## **Scope of Policy**

This policy applies to all Asbury University students, faculty, staff, campus visitors, contractors, consultants, and vendors. This policy applies on all University property, on all property at which the University holds educational programs or activities, and on all means of transport utilized by or on behalf of the University for students, faculty, and staff. This policy applies to all Asbury University educational programs and other University-sponsored activities.

## **Rights of the Complainant and Respondent**

Asbury University's policy and procedures for the investigation and resolution of sexual misconduct complaints are designed to be accessible, prompt, equitable, and impartial.

Throughout this process, both the complainant (the person making the allegations of sexual misconduct) and respondent (the person against whom a complaint of sexual misconduct has been made) have the following rights:

- To be treated with respect, dignity, and sensitivity.
- To receive appropriate support from Asbury University.
- To have privacy to the extent possible, consistent with applicable law and University policy.
- To be informed about the University's Sexual Misconduct Policy.
- To have the presence of a support person or Safe Relationships Advocate (SRA) throughout the process.
- To participate or to decline to participate in the investigation or complaint resolution process. However, a decision not to participate in the process either in whole or in part will not prevent the University from proceeding with the information available.
- To have a prompt and thorough investigation of the allegations.
- To appeal a decision made by a Title IX Coordinator or investigative body.
- To be notified, in writing, of the case resolution, including the outcome of any appeals.

Asbury University will disclose information about its investigation and resolution of sexual misconduct complaints only to those who need to know the information in order to carry out their duties and responsibilities. It will inform all University personnel participating in an investigation, proceeding, or hearing that they are expected to maintain the privacy of the process.

## **Title IX Information**

Title IX of the Education Amendments of 1972 is a federal law that prohibits discrimination on the basis of sex in federally funded education programs and activities, including but not limited to athletic programs that receive federal funding.

Title IX states:

*"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any education program or activity receiving Federal financial assistance." (20 U.S.C. Sec. 1681).*

Under Title IX, discrimination on the basis of sex can include sexual harassment, sexual assault, and dating violence.

## **Title IX Coordinators and Safe Relationship Advocates**

In accordance with Title IX, the President of Asbury University has designated Title IX Coordinator(s) who are responsible for coordinating compliance with Title IX.

The *Title IX Lead Coordinator* is responsible for implementing and monitoring Title IX compliance on behalf of Asbury University. This includes coordination of training, education, communications, and administration of the complaint and grievance procedures for the handling of suspected or alleged violations of Title IX.

The *Title IX Deputy Coordinators* are also responsible for implementing and monitoring Title IX compliance at Asbury University and for notifying the *Lead Coordinator* of any alleged or suspected violations of Title IX and the resolution of such alleged or suspected violations, regardless of whether a grievance is submitted.

*Safe Relationship Advocates* are trained members of the Asbury staff or faculty who serve as advocates for the complainant or respondent during an investigation process. Safe Relationship Advocates may also help a potential complainant determine next steps and make support resources available to anyone involved in a sexual misconduct concern.

Any student, faculty or staff member, or applicant for admission who has concerns about sex discrimination, including but not limited to acts of sexual harassment, sexual assault, or dating violence, is encouraged to seek the assistance of a Title IX Coordinator.

### **When a Title IX Coordinator or Safe Relationship Advocate Should Be Contacted**

An individual should contact a Title IX Coordinator and/or a Safe Relationship Advocate for any of the following reasons:

- If a person wants to review options after encountering what they believe to be sexual misconduct
- If a person learns of a situation that may involve sexual misconduct
- If a person needs help on how to handle a situation involving possible sexual misconduct in which they are indirectly affected
- If a person wants information about possible informal remedies to de-escalate or alleviate a difficult situation involving possible sexual misconduct
- If a person has questions about Asbury University's Sexual Misconduct Policy or Procedures
- For information about available training and resources designed to prevent sexual misconduct

| <b>Asbury University Title IX Coordinator and Safe Relationship Advocate Contact Information</b> |  |   |   |
|--|--|---|---|
| <b>Coordinator Title</b>   | <b>Name/Position</b>                               | <b>Office Location</b>  | <b>Phone/Email</b>  |
| Lead Coordinator   | <b>Glenn Hamilton</b><br>VP for Business Affairs   | 2 <sup>nd</sup> Floor Hager Administration Bldg., Room 214      | 859-858-3511, x2106<br><a href="mailto:glenn.hamilton@asbury.edu">glenn.hamilton@asbury.edu</a>         |
| Deputy Coordinator   | <b>Sarah Baldwin</b><br>VP for Student Development | 1 <sup>st</sup> Floor Student Center, Room 109                  | 859-858-3511, x2116<br><a href="mailto:sarah.baldwin@asbury.edu">sarah.baldwin@asbury.edu</a>           |
| Deputy Coordinator   | <b>Tim Campbell</b><br>Academic Dean               | 2 <sup>nd</sup> Floor Hager Administration Bldg., Room 205      | 859-858-3511, x2109<br><a href="mailto:tim.campbell@asbury.edu">tim.campbell@asbury.edu</a>             |
| Deputy Coordinator   | <b>Vicki Bell</b><br>Professor of Music            | McCreless Hall, Room 121  | 859-858-3511, x2245<br><a href="mailto:vicki.bell@asbury.edu">vicki.bell@asbury.edu</a>                 |
| Safe Relationship Advocates  | Resident Directors                                 | Aldersgate, Glide-Crawford, Kresge, Johnson, and Trustees Halls | <a href="mailto:residencelife@asbury.edu">residencelife@asbury.edu</a> or individual Resident Directors |

## **Prohibited Conduct: Definitions**

“Sexual misconduct” is a broad, non-legal term that encompasses a wide range of behaviors, including but not limited to: sexual harassment, sexual assault, sexual exploitation, stalking, dating violence, and domestic violence. It is a violation of University policy as well as applicable law to commit or attempt to commit these acts.

Sexual misconduct can occur between strangers, acquaintances, or people who know each other well. It can be committed by anyone, regardless of gender. This policy prohibits all forms of sexual misconduct.

### **Sexual Harassment**

Sexual harassment is unwanted sexual advances, requests for sexual favors, or other visual, verbal or physical conduct of a sexual nature when:

- Such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or academic status;
- An individual's submission to or rejection of such conduct influences employment or academic status decisions affecting that individual;
- Such conduct has the purpose or effect of interfering with an individual's work or academic performance; or
- Such conduct creates an intimidating, hostile, or offensive work or educational environment

While sexual harassment encompasses a wide range of conduct that may be verbal, visual, or physical in nature, specifically prohibited conduct includes but is not limited to:

- Promising an individual a reward, directly or indirectly, if the person complies with a sexually oriented request
- Threatening retaliation against a person, directly or indirectly, if the person refuses to comply with a sexually oriented request
- Denying a student or employee an employment or education related opportunity, directly or indirectly, if the student or employee refuses to comply with a sexually oriented request
- Engaging in sexually suggestive conversation
- Displaying pornographic or sexually oriented materials
- Engaging in indecent exposure
- Making sexual or romantic advances toward a person and persisting despite the person's rejection of the advances



- Physical conduct such as assault, touching, or blocking normal movement
- Retaliation for making reports of harassment or threatening to report harassment

More subtle forms of inappropriate behavior such as offensive posters, cartoons, caricatures, comments, social media posts, e-mails, and jokes of a sexual nature are prohibited, as they may constitute sexual harassment when they contribute to a hostile or offensive work, academic, or campus environment.

Sexual harassment can involve males or females being harassed by members of the same or opposite sex. Although sexual harassment sometimes involves a person in a greater position of authority as the harasser, individuals in positions of lesser or equal authority also can be found responsible for engaging in prohibited harassment.

Sexual harassment can be physical and/or psychological in nature. An aggregation of a series of incidents can constitute sexual harassment even if one of the incidents considered separately would not rise to the level of harassment.

### **Sexual Assault**

Sexual assault is any type of sexual contact or behavior that occurs without consent of the recipient. Falling under the definition of sexual assault is sexual activity such as forced sexual intercourse, sodomy, molestation, incest, fondling, and attempted rape. It includes sexual acts against people who are unable to consent either due to age or lack of capacity.

### **Sexual Exploitation**

Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to the benefit or advantage of anyone other than the one being exploited, and the behavior does not otherwise constitute one of the other sexual misconduct offenses.

Examples of sexual exploitation include but are not limited to:

- Invasion of sexual privacy
- Prostituting another person
- Non-consensual viewing, videoing, audio-taping, or broadcasting sexual activity
- Engaging in voyeurism, which is the sexual interest in or practice of spying on people engaged in intimate behaviors, such as undressing, sexual activity, or other actions usually considered to be of a private nature

- Knowingly transmitting an STD or HIV to another person
- Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals
- Sexually based stalking and/or bullying may also be forms of sexual exploitation

### **Stalking**

Stalking is a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking is dangerous and can often cause severe and long-lasting emotional and psychological harm to victims. Stalking often escalates over time and can lead to domestic violence, sexual assault, and even homicide. Stalking can include frightening communications, direct or indirect threats, and harassing a victim through the internet.

Examples of stalking include but are not limited to:

- Electronic or telephone harassment
- Following someone
- Giving unwanted gifts or other similar forms of intrusive behavior

### **Dating Violence**

Dating violence is violence and abuse committed by a person to exert power and control over a current or former dating partner. Dating violence often involves a pattern of escalating violence and abuse over a period of time. Dating violence covers a variety of actions and can include physical abuse, physiological and emotional abuse, and sexual abuse. It can also include "digital abuse," the use of technology such as smartphones, the internet, or social media, to intimidate, harass, threaten, or isolate a victim.

Examples of dating violence include but are not limited to:

- Trying to cut off the victim's relationship with family and friends
- Humiliating the victim in front of friends
- Making the victim fearful by using threatening behavior

- Threatening to find someone else if the dating partner doesn't comply with the abuser's wishes or demands
- Using or threatening to use physically assaultive behaviors such as hitting, shoving, grabbing, slapping, beating, kicking, and touching or forcing the victim to engage in unwanted sexual activity

## **Domestic Violence**

Domestic violence is a pattern of abusive behavior in a relationship that is used by one partner to maintain power and control over another current or former intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behavior that intimidates, manipulates, humiliates, isolates, frightens, terrorizes, coerces, threatens, hurts, injures, or wounds someone.

Examples of domestic violence include but are not limited to:

- Causing or attempting to cause physical or mental harm to a family or household member
- Placing a family or household member in fear of physical or mental harm
- Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress
- Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested

## **Other Important Concepts and Definitions**

### **Consent**

Consent must be informed and voluntary and can be withdrawn at any time. Consent can be given by words or actions as long as those words or actions create mutually understandable permission regarding the scope of sexual activity. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent.

Silence or absence of resistance does not imply consent. Past consent to sexual activity with a person does not imply ongoing future consent with that person or consent to that same sexual activity with another person.

If a person is mentally or physically incapacitated or impaired so that he or she cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption that meets this standard, or being asleep or unconscious.

### **Effect of drugs and alcohol on consent**

*Individuals should be aware of, and carefully consider, the potential consequences of the use of alcohol or drugs. Alcohol and other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given. If there is a question about whether someone consented to sexual activity after consuming drugs or alcohol, the University will examine the issue from the perspective of a reasonable person. Specifically, the University will consider whether the respondent reasonably should have known about the impact of alcohol and other drugs on the complainant's ability to give consent.*

### **Incapacitation**

Incapacitation is the inability, temporarily or permanently, to give consent because the person is mentally and/or physically helpless due to drug or alcohol consumption, either voluntary or involuntary, or the person is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. Some signs of incapacitation may include but are not limited to lack of control over physical movements (e.g., stumbling, falling down), lack of awareness of circumstances or surroundings, or the inability to speak or communicate non-verbally.

It is a violation of this Policy and Kentucky law to engage in sexual activity with a person who is incapacitated, regardless of whether the person appeared to be a willing participant. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication.

### **Force**

The use of force to cause someone to engage in sexual activity is, by definition, non-consensual contact and is prohibited. Force may include words, conduct, or appearance. Force includes causing another's intoxication or impairment through the use of drugs or alcohol. Under this Policy, force includes the use of any of the following: physical force (including using violence or displaying a weapon), threats (verbal or nonverbal), intimidation, and/or implied threats.

## **Coercion**

Coercion is to force one to act based on fear of harm to self or others. Means of coercion may include, but are not limited to, pressure, threats, or emotional intimidation.

## **Hostile Environment**

A hostile environment exists when sexual or sex-based harassment is sufficiently serious to deny or limit a student's ability to participate in or benefit from the University's programs or activities or has the effect of unreasonably interfering with an employee's work performance or altering the terms and conditions of the employee's employment. A hostile environment can be created by anyone involved in a University program or activity (e.g., administrators, faculty or staff members, students, or campus visitors).

In determining whether sex-based harassment has created a hostile environment, the University considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not enough, that the conduct was unwelcome to the person who was harassed. But the University will also need to find that a reasonable person in the complainant's position would have perceived the conduct as undesirable or offensive in order for that conduct to create or contribute to a hostile environment.

To determine whether a hostile environment exists, the University will consider a variety of factors related to the severity, persistence, or pervasiveness of the sex-based harassment, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and (5) the degree to which the conduct affected the student's education or the employee's employment.

The more severe the sex-based harassment, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of sexual assault may be sufficient to create a hostile environment. Likewise, a series of incidents may be sufficient even if the sex-based harassment is not particularly severe.

## **Miscellaneous Definitions**

- *Complainant*: The person making the allegation of sexual misconduct
- *Respondent*: The person against whom a complaint of sexual misconduct has been made
- *Reporter*: A person who has information that sexual misconduct may have been committed by a University student, employee, campus visitor, or other participant in a University program and who initiates a complaint. With the exception of confidential sources, all persons with knowledge of potential sexual misconduct are expected to

“tell it forward.” However in Kentucky, any person is a mandated reporter of abuse against individuals under the age of 18. Contact the Kentucky Department for Community Based Services at 855-306-8959 or Kentucky Statewide Child Abuse Hotline, 1-877-597-2331.

## **Introductory Sexual Misconduct Complaint Information**

### **Timing of Complaints**

There is no time limit to initiate a complaint of alleged sexual misconduct. However, individuals are strongly encouraged to report sexual misconduct in a timely manner to maximize the University’s ability to gather evidence, and, if necessary, conduct a thorough, impartial, and reliable investigation.

### **Effect of Criminal Proceedings**

The filing and processing of a complaint of sexual misconduct is separate from and independent of any criminal investigation or proceeding. Asbury University will not wait for the conclusion of any criminal investigation or proceedings to begin its own investigation, although the University may delay temporarily the fact-finding component of the investigation while the police are gathering evidence. Neither law enforcement’s determination as to whether or not to prosecute a respondent nor the outcome of any criminal prosecution is determinative of whether sexual misconduct occurred under the University’s Sexual Misconduct Policy and Procedures.

### **Bystander Intervention & Conditional Immunity**

Asbury University is deeply committed to the health, safety and well-being of its students. Bystander intervention by students can be a critical aspect of enhancing the welfare of their peers. Students are strongly encouraged to contact University personnel, call 911, or seek other professional or medical attention when the health or safety of themselves or others is threatened or appears to be at risk.

The University wants to eliminate barriers for students who may be hesitant to seek medical or emergency help or report the incident to University officials because they fear being held accountable for policy violations (e.g., drinking alcoholic beverages). To encourage reporting, Asbury offers conditional immunity from being charged with policy violations related to the particular incident to students who are accessing help for themselves or others. While there may be no disciplinary sanctions for these individuals, the University may provide elements of help, accountability, support, and education.

### **Complainant and Respondent Support Person**

The complainant and respondent may each choose a support person to accompany them to any meeting, interview, or hearing related to a claim of sexual misconduct. A support person may be a trained University Safe Relationship Advocate or an individual of his or her choice. A support person may not intervene in a meeting or interview or address the Investigator. A support person may quietly confer or pass notes with the party in a non-disruptive manner. Asbury University reserves the right to proceed with any meeting or interview regardless of the availability of the party's selected support person.

### **Declining to Participate**

A complainant and/or respondent may decline to participate in any portion of the investigative or complaint resolution process. The University may continue the process without the complainant's and/or respondent's participation. In most cases, a refusal to participate in the investigative process will preclude a complainant or respondent from appealing any determination.

### **Time Frame for Complaint Resolution**

Asbury University will seek to resolve every report of sexual misconduct within thirty (30) calendar days of the filing of a sexual misconduct complaint, not counting any appeals. Time frames may vary depending on the complexity of a case, the availability of witnesses, and at certain times of the academic year (for example, during breaks, study periods, or final exams). The University may extend any time frame for good cause with a written explanation to the complainant and respondent.

### **Retaliation**

It is against federal law and a violation of Asbury University's policy to retaliate against a person for filing a complaint of sexual misconduct or for cooperating in a sexual misconduct investigation. Any person who retaliates against a person for reporting sexual misconduct, filing a sexual misconduct complaint, or participating in a sexual misconduct investigation is subject to disciplinary action up to and including expulsion from the University for students and termination from employment for faculty and staff members.

### **Filing a False Complaint**

Knowingly providing false information during any stage of a sexual misconduct case is prohibited and is considered misconduct subject to disciplinary action up to and including expulsion from the University or termination of employment.

## **Complaints Filed By Individuals under the Age of 18**

Before beginning an investigation, the University will inform and obtain consent from the parents of any individual involved in a sexual misconduct complaint who is under the age of 18.

## **Initiating a Complaint**

Any person who believes they have experienced, or believe they have knowledge of, alleged sexual misconduct may initiate a complaint against the person(s) they believe are responsible for the alleged conduct.

There are several ways to initiate a complaint, and each way involves contacting a Title IX Coordinator either directly or through a staff or faculty member. Initiating a complaint may be done in person, on the phone, through email, or in writing.

Contact one of the following:

- A Title IX Coordinator
- A Safe Relationship Advocate
- An Asbury University security officer
- Any faculty or staff member that the individual trusts

## **Privacy and Confidentiality**

If the complainant requests confidentiality or asks that the report of sexual misconduct not be pursued, the University generally will, before taking any further investigative steps, evaluate the complainant's request.

The Title IX Coordinator(s) will attempt to balance the needs of the parties for privacy with the University's responsibility of ensuring a safe educational environment and workplace. Confidentiality is an aspiration but is not always possible or appropriate. An individual's requests regarding the confidentiality of reports of sexual misconduct will be considered in the dual contexts of the institution's legal obligation to ensure a working and learning environment that is free from sexual misconduct and the due process rights of the accused to be informed of the allegations and their source. Some level of disclosure may be necessary to ensure a complete and fair investigation and to ensure the University meets its obligations under Title IX and other applicable law. The University may be limited in its response and investigation if confidentiality is requested.

Even absent a request for confidentiality, every reasonable effort will be made to protect the privacy of all parties involved in a sexual misconduct complaint. Asbury University will disclose information about its investigation and resolution of sexual misconduct complaints only to those



who need to know the information in order to carry out their duties and responsibilities. It will inform all University personnel participating in an investigation, interview, or hearing that they are expected to maintain the privacy of the process.

## **Confidential Reporting and Counseling Resources**

A complainant wishing to receive confidential help and support may utilize any of the on-campus or off-campus counseling resources listed below. If the complainant decides to file an official report of the incident, these resources are also prepared to assist the complainant in all aspects of reporting, up to and including the incident being investigated and the respondent confronted. Confidential counseling is also available to the respondent by the following on-campus offices.

### ***Confidential on-campus support***

Center for Counseling: 859-858-3511, x2323; [counseling@asbury.edu](mailto:counseling@asbury.edu); Mon.-Fri., 8 a.m.-5 p.m.

Office of Spiritual Life: 859-858-3511, x2200; [spiritual.life@asbury.edu](mailto:spiritual.life@asbury.edu); Mon.-Fri., 8 a.m.-5 p.m.

Student Health Services: 859-858-3511, x2277; [health.services@asbury.edu](mailto:health.services@asbury.edu); Mon.-Fri., 9 a.m.-4 p.m.

### ***Off-campus confidential support***

Ampersand Sexual Violence Resource Center of the Bluegrass (formerly Bluegrass Rape Crisis Center): 859-253-2511

National Sexual Assault Hotline operated by RAIN: 1-800-656-4673

*Counselors are available 24 hours/day to provide support, information, education, and referrals.*

## **Emergency Resources for Victims of Sexual Assault**

### **Emergency Procedures**

Victims of sexual assault or anyone in immediate danger should contact:

Wilmore Police Department: 911

Asbury Security: 859-858-3511, ext. 0

## **Medical Assistance**

Following a sexual assault, the most important concern is for the health, safety, and care of the victim. As difficult as it can be, we strongly encourage campus community members to seek medical assistance at the nearest hospital following a sexual assault. A medical examination is vital for the health and well-being of the sexual assault victim and also will assist law enforcement if a report is made. A medical examination is an important element of obtaining evidence if a person desires to press charges.

While the first inclination of a victim may be to take a shower, it's important not to wash, shower, bathe, or douche or to change, destroy, or clean the clothes worn during the assault before having the exam. Forensic medical exams need to be conducted within 72 hours of an assault in order to obtain any evidence. It is important to bring a change of clothing if the person goes to the hospital. It may be necessary for the nurse or police to keep the clothes worn during the assault. If the person has already changed clothes, the articles of clothing that were worn can be brought in a paper bag.

Normally, there is no cost to the victim and it is not documented through the person's health insurance. Victims can request an advocate be present to assist during the exam. These exams can be performed without a report to law enforcement, and evidence can be collected and held for up to six months through an anonymous collection process. This gives the victim time to consider whether to report the incident to law enforcement.

Some hospitals are equipped with a SANE (Sexual Assault Nurse Examiner) Nurse who works as part of the SART (Sexual Assault Response Team). The SART includes the nurse examiner, a detective, and an advocate from the local rape crisis center.

The following hospitals in the Lexington area have SANE Nurses available:

University of Kentucky Chandler Hospital  
Chandler Emergency Department  
1000 South Limestone  
Lexington, KY 40536

Ephraim McDowell Regional Medical Center  
217 South Third Street  
Danville, KY 40422

## **Police Reporting**

A complainant may choose to file both a sexual misconduct complaint and a criminal complaint simultaneously or may choose to file one report or the other. A complainant may choose to file a police report directly. Any Student Development personnel, Director of Security, or Title IX Coordinator can assist a complainant, upon request, in making such a

report. A complainant may also directly contact the Wilmore Police Department at 859-858-3535.

## **Reporting Abuse of Minors**

In Kentucky any person who knows or has reasonable cause to believe that an individual under the age of 18 is a victim of abuse has a duty to report it. Suspected instances of abuse that do not require an emergency response should be reported to one of the following:

Kentucky Department for Community Based Services: 1-855-306-8959

Kentucky Statewide Child Abuse Hotline: 1-877-597-2331

## **Anonymous Complaints**

Anonymous complaints of sexual misconduct will be accepted; however, the University may be limited in its options for investigating and/or resolving anonymous complaints because of the unique challenges they present. Anonymous complaints can be received either by an anonymous letter addressed to a Title IX Coordinator or reported through another individual representing the complainant. There is no way to properly assess the author's claim and no ability to obtain additional information from the complainant if the complaint is unclear or confusing. However, if the anonymous complaint contains sufficiently detailed information which, if true, would constitute a violation of this policy, the complaint will be investigated to the best of the Title IX Coordinator(s)' ability given the anonymous nature of the complaint. A record will be kept of all anonymous complaints.

## **Title IX Coordinator(s) Authority**

Asbury University's Title IX Coordinators have the authority to:

- Accept all complaints of alleged sexual misconduct
- Keep accurate records of all complaints
- Conduct interviews and investigations to determine the presence or absence of sexual misconduct
- Make findings of fact or arrange for a faculty/staff Hearing Panel to review the evidence and make findings
- Identify specific corrective measures to stop, remediate, and prevent sexual misconduct
- Ensure appropriate training and education of University students, faculty, and staff members in sexual misconduct prevention
- The Title IX Lead Coordinator is responsible for the oversight of and compliance with the University's Sexual Misconduct Policy; however, any Title IX Deputy Coordinator acting in the absence of the Lead Coordinator is vested with the same authority as the Lead Coordinator.

## **Procedures for Informal Resolution**

Asbury University encourages informal resolution options when the parties desire to resolve the situation cooperatively or when inappropriate behavior does not rise to the level of violation of University policy, as determined by the Title IX Coordinator(s), but nonetheless is adversely affecting the educational environment or workplace. Informal resolution may include an inquiry into the facts but typically does not rise to the level of an investigation.

Informal resolution includes, but is not limited to, options such as referral to another campus office or program, mediation, separation of the parties, referral of the parties to counseling programs, or conducting targeted educational and training programs.

Situations that are resolved through informal resolution are usually subject to follow-up after a period of time to assure that resolution has been implemented effectively. Steps taken by a Title IX Coordinator to help parties achieve an informal resolution will be documented.

Some reports of discrimination or harassment, including but not limited to forcible sex offenses, may not be appropriate for informal resolution.

## **Procedures for Formal Investigation**

In response to reports of sexual misconduct in cases where the complainant does not wish to engage in informal resolution, where informal resolution is not appropriate, or in cases where attempts at informal resolution are unsuccessful, a Title IX Coordinator(s) may choose to conduct a formal investigation.

A decision to proceed with a formal investigation is normally preceded by the Title IX Coordinator(s) making preliminary inquiries into the facts of a complaint. If the facts are not disputed, both the complainant and the respondent will be notified that the complaint has been resolved. Upon resolution, the appropriate administrator will be notified of the respondent's behavior by the Title IX Coordinator(s). Appropriate disciplinary action and/or sanctions will be determined by the appropriate administrator (see chart p. 22).

If the facts of the case are disputed and the Title IX Coordinator(s) decides a formal investigation is appropriate, the Title IX Coordinator(s) will appoint investigator(s) to investigate the complaint. In addition, the Title IX Coordinator(s) will inform the complainant of campus resources available to him or her and make immediate (and temporary) provision for the physical and/or emotional safety of the complainant when necessary. The Title IX Coordinator(s) will also notify the complainant and respondent in writing that the complaint is being investigated.

## **Interim Measures**

Upon receiving a sexual misconduct complaint, the Title IX Coordinator(s) will review the allegations and determine the necessity and scope of any interim measures to prevent further acts of sexual misconduct in order to provide a safe educational and work environment. The range of interim measures may include but are not limited to:

- Moving the complainant's or respondent's residence
- Adjusting the complainant's or respondent's work schedule, assignment, or location for University employment
- Changing the complainant's academic schedule, allowing the complainant to take an incomplete in one or more courses, allowing the complainant to drop (or retake) a course without penalty, or complete the course via independent study
- Allowing the complainant to withdraw from or retake a class without penalty, or extending deadlines for examinations or other assignments
- Providing an escort to ensure safe movement between classes and other activities
- Reassigning the respondent to another course section, if the complainant and respondent are enrolled in the same course
- Providing access to tutoring or other academic support
- Issuing a no contact order
- Interim suspension of the respondent

## **Investigation Process**

An investigation will generally include interviews with the parties, if available, and other witnesses as needed. It will also include a review of relevant documents as appropriate. Disclosure of facts to witnesses shall be limited to what is reasonable to conduct a fair and thorough investigation. Participants in an investigation shall be advised that maintaining confidentiality is essential to protect the integrity of the investigation and will be advised to refrain from discussing pending investigations.

A typical investigation should be completed within thirty (30) calendar days of the Title IX Coordinator's notice of the allegations. Depending on the circumstances, the investigation may extend beyond thirty (30) days.

Upon completion of the investigation, the Title IX Coordinator(s) or designated Hearing Panel will determine whether sexual misconduct occurred using the "preponderance of the evidence" standard as interpreted by the U.S. Department of Education's Office of Civil Rights. A preponderance of the evidence means that the information and evidence gathered indicates that it is "more likely than not" that the respondent either committed, or did not commit, sexual misconduct.

Generally, an investigation will result in a written report that includes the finding reached by the Title IX Coordinator(s). There are three findings that may result from an investigation:

- A. Substantiated:** Based on the totality of the circumstances and the information obtained pursuant to the investigation, it is more likely than not that the respondent committed an act of sexual misconduct.
- B. Unsubstantiated:** It is not possible to determine whether the allegation(s) are true or untrue. There is insufficient evidence to prove or disprove that the allegation is true.
- C. Unfounded:** It is more likely than not that the allegation(s), while made in good faith, is not true. A finding that the allegation(s) is unfounded does not indicate that the complaint was improper or knowingly false.

If the Title IX Coordinator(s) or designated Hearing Panel believes sexual misconduct has occurred, the appropriate administrator (see chart below) will be notified of the respondent's behavior and determine appropriate disciplinary action or sanctions.

#### **Administrators Responsible for Administering Appropriate Disciplinary Actions or Sanctions**

| <b>Respondent</b>          | <b>Administrator</b>                   |
|----------------------------|--|
| Student—TUG/APS/GPS        | Vice President for Student Development |
| Faculty Member             | Provost                                |
| Administrator/Staff Member | Appropriate Executive Officer          |

#### **Appeals Process**

Appeals of the finding of a Title IX Coordinator may be made within ten (10) calendar days of receiving notification of the decision. Appeals must be made in writing or sent electronically to Glenn Hamilton, Title IX Lead Coordinator, at [glenn.hamilton@asbury.edu](mailto:glenn.hamilton@asbury.edu).

If a Title IX case finding is appealed, both the complainant and respondent will be notified. The Appeals Hearing Board will be chaired by a Title IX Coordinator with other hearing committee members selected by the Title IX Lead Coordinator or their designate.

The appeals hearing will commence within ten (10) calendar days from the date the appeal was made. (Reasonable extensions to this deadline may be made for good cause.)

Appeals are not intended to be full re-hearings of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the original investigation and pertinent documentation regarding the grounds for the appeal. Both the complainant and the respondent may have an opportunity to speak to the committee at separate times.

Appeals decisions will be deferential to the original finding, making changes to the finding only where there is a clear error. The original finding of the Title IX Coordinator(s) is presumed to have been decided reasonably and appropriately; therefore the burden is on the appealing party to show clear reasoning for a reconsideration of the finding. The Appeals Hearing Board may affirm the Title IX Coordinator's initial finding or make a new finding.

After the appeals hearing has concluded, the complainant, the respondent and the Title IX Coordinator who made the initial ruling will receive the Appeals Hearing Board's decision in writing within three (3) calendar days from the conclusion date of the hearing. (Reasonable extensions to this deadline may be made for good cause.)

The Appeals Hearing Board represents the final appeal of the finding for the complainant and the respondent.

## **Records Retention**

The Title IX Coordinator(s) are responsible for maintaining records relating to sexual misconduct reports, investigations, and resolutions. Records shall be maintained in accordance with University records policies and will generally be kept up to seven years after the complaint has been resolved. Records may be maintained for a longer period of time at the discretion of the Title IX Coordinator(s) in cases where the parties have a continuing affiliation with the University. All records pertaining to pending litigation or a request for records shall be maintained in accordance with instructions from University legal counsel.