

# **KANSAS WESLEYAN UNIVERSITY**

## **SEXUAL MISCONDUCT AND UNLAWFUL HARASSMENT POLICY (“Policy”)**

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MODIFICATION OF AND AMENDMENT TO: KANSAS WESLEYAN UNIVERSITY (“KWU”) FACULTY HANDBOOK (IN EFFECT DURING 2010-2011, AS AMENDED), EMPLOYEE HANDBOOK FOR ADMINISTRATION AND STAFF (IN EFFECT DURING 2010-2011, AS AMENDED), COYOTES STUDENT HANDBOOK (DATED 2010-2011, AS AMENDED), 2010-11 ACADEMIC CATALOG (DATED JULY 2010, AS AMENDED) AND OTHER KWU DOCUMENTS AND WRITTEN MATERIALS AND POLICIES COVERING SEXUAL MISCONDUCT AND/OR UNLAWFUL HARASSMENT

The KWU Faculty Handbook (in effect during 2010-2011, as amended) (“Faculty Handbook”), Employee Handbook for administration and staff (in effect during 2010-2011, as amended) (“Employee Handbook”), Coyotes Student Handbook (dated 2010-2011, as amended) (“Student Handbook”), 2010-11 Academic Catalog (dated July 2010, as amended) (“Academic Catalog”), and all other KWU documents, written materials and policies addressing or covering sexual misconduct and/or unlawful harassment, are collectively referred to herein as the “Handbooks,” and are hereby amended and modified to add the following sexual misconduct and unlawful harassment policy in its entirety, which is to be construed as if its contents are contained within the Handbooks.

IN THE EVENT OF ANY INCONSISTENCY IN THE PROVISIONS OF THE HANDBOOKS (AS REVISED, AMENDED OR MODIFIED FROM TIME TO TIME), AND THIS INSTRUMENT, THE PROVISIONS OF THIS INSTRUMENT SHALL PREVAIL AND BE INTERPRETED AS SUPERSEDING THOSE IN THE HANDBOOKS.

**I. POLICY**

Sexual misconduct is unacceptable and will not be tolerated at KANSAS WESLEYAN UNIVERSITY. Accordingly, KWU urges an individual to make a formal report if that individual is the victim of sexual misconduct, has knowledge of another person’s being the victim of sexual misconduct, or believes in good faith that he/she has witnessed a possible warning sign of sexual misconduct. A report of sexual misconduct will be dealt with promptly. Confidentiality will be maintained to the greatest extent possible, but without violating the need to insure due process of law/procedure to anyone accused of sexual misconduct.

ALL MEMBERS OF THE KWU COMMUNITY, INCLUDING BUT NOT LIMITED TO STUDENTS, FACULTY (INCLUDING ADJUNCT FACULTY), ADMINISTRATORS, STAFF, VOLUNTEERS AND INDEPENDENT CONTRACTORS (COLLECTIVELY “MEMBERS” OR “members”) ARE SUBJECT TO THIS POLICY.

Violators will be subject to disciplinary action that may include job termination, expulsion, suspension, removal from campus, contract cancellation, other appropriate institutional sanctions or any other action reasonably necessary to address the inappropriate behavior. Prosecution by civil authorities may also occur.

## **II. DEFINITIONS**

### **A. Sexual Misconduct**

This policy defines sexual misconduct as any threat, act or omission used to obtain sexual gratification against another’s will or at the expense of another, including without limitation, behavior inducing fear, shame, or mental suffering. Sexual misconduct includes unwanted sexual acts or actions, whether by a domestic partner, an acquaintance, a person in the position of authority, or a stranger that occurs without indication of consent of both individuals or under threat or coercion. Sexual misconduct can occur either forcibly and/or against a person’s will, or when a person is incapable of giving consent. Silence does not, in and of itself, constitute consent. The victim of sexual misconduct may be anyone, including but not limited to, adults, adolescents, minors, the developmentally disabled, and vulnerable individuals regardless of age.

Sexual misconduct may include, but is not limited to, rape, forcible sodomy, forcible oral copulation, sexual assault with an object, sexual battery, forcible fondling, and threat of sexual assault.

### **B. Background Checks**

This policy defines background checks as, but not limited to, the following:

- A search for sex-related offenses in an individual’s counties of residence for the past seven years;
- A search of the state registry of sex offenders; and
- A database search for criminal activity in the individual’s states of residence for the past seven years.

### **C. Key Students**

This policy defines “key students” as those students who are in practicum involving protected persons or the medical field, student teachers, students working with protected persons and resident assistants.

#### **D. Camp Counselors and Program Leaders**

This policy defines “camp counselors” and “program leaders” as those members who in the course and scope of their employment or service conduct activities at or on behalf of KWU and come in contact with protected persons.

#### **E. Protected Persons**

This policy defines “protected persons” to include minors, developmentally disabled individuals regardless of age and vulnerable individuals regardless of age. Vulnerable individuals include those who are mentally incapacitated, whether temporarily or permanently, for any reason including but not limited to intoxication, drugs, or mental incompetence. Sexual misconduct with respect to a protected person includes the intent to arouse or satisfy the sexual desires of either the protected person or the perpetrator.

#### **F. Minors**

This policy defines minors as those individuals who have not yet reached the age of majority and are not enrolled as students at KWU.

See also, Definitions in Section V, Unlawful Harassment.

### **III. CONFIDENTIALITY OF INFORMATION**

KWU will make every effort reasonably possible to preserve the privacy of an individual who makes a report under this policy and to protect the confidentiality of the information reported, subject to the “due process” rights of an accused. The degree to which confidentiality can be protected, however, also depends upon KWU’s legal duty to respond to the information reported and the professional role of the person being consulted. The professional being consulted should make these limits clear before the disclosure of any facts.

As required by law, all disclosures to any KWU employee of an on-campus act of sexual misconduct are tabulated for statistical purposes without personal identifying information. Further information regarding disclosure may be found in Section VII B.

### **IV. EDUCATION AND PREVENTION**

#### **A. Educational Training Programs**

KWU provides resources for education and training about, and prevention of, sexual misconduct and unlawful harassment. Members of the KWU community are urged to take advantage of the following on-campus prevention and educational resources, and are required to do so as described in section IV C below.

- Student Orientation Program, required for all new students, and available to all members wishing to attend

- Unlawful Harassment Program/Sexual Misconduct Program conducted annually on-campus through the KWU Provost's Office (1 hour)
- CD lecture on sexual misconduct through the General Counsel's Office (1 hour)

## **B. Background Checks**

Except for adjunct faculty, KWU performs pre-employment background checks on all new employees as a condition of employment.

KWU performs background checks for adjunct faculty as soon as possible after they have been appointed and before they commence working.

Background checks are not required for current employees with the exception of those employees changing positions. For current employees changing positions, including those filling interim positions, a background check is only required when the new position increases the impact of the perceptible risk factor (contact with protected persons). If an employee experiences a position change within the same or greater perceptible risk factor, a new background check needs to be conducted if it has been five or more years since the last background check.

KWU performs background checks on all key students, camp counselors and program leaders prior to the performance of their duties or participation in the activity engendering this requirement.

KWU will make commercially reasonable efforts to ensure that all third-party contractors and vendors are responsible by contract for complying with these background check standards in regard to their employees, volunteers and subcontractors.

The term "employees" is intended to include administration, faculty (including, adjunct faculty) and staff.

## **C. Training**

Sexual misconduct often takes place when there is a power imbalance. A sound sexual misconduct prevention training program prioritizes awareness directly tied to prevention, along with strategies for a proactive response once a warning sign emerges.

Sexual misconduct prevention training is required for members of the KWU campus community according to the following schedule:

- New employees, within six months of hire;
- All employees, who come in contact with protected persons – annually;
- All employees who do not come in contact with protected persons – biennially;

- Key students, camp counselors and program leaders prior to performing their duties or participating in the qualifying activity;
- Volunteers who come in contact with protected persons – biennially.

## V. UNLAWFUL HARASSMENT

### A. General

KWU prohibits conduct (collectively and individually, “unlawful harassment”) that constitutes or could lead or contribute to harassment based on race, color, religion, national origin, citizenship, age, sex (whether or not of a sexual nature), gender, sexual orientation or preference, veteran status, marital status, disability, or any other characteristic ("protected characteristics") protected under all applicable laws and regulations.

Examples of such conduct include, but are not limited to:

- Ethnic slurs;
- Use of computers (including via the Internet) or the electronic mail system to view or distribute racially or sexually offensive communications;
- Threatening, intimidating, or hostile acts directed at a particular sex or religious group or directed at an individual because of his or her sexual orientation, color or ethnicity;
- Requiring a member to perform certain duties or responsibilities simply because of his or her protected characteristic.

Harassment does not require an intent to offend. Inappropriate conduct meant as a joke, a prank, or even a compliment may lead or contribute to or constitute harassment.

Sexual harassment is any form of member misconduct that (a) interferes with productivity and wrongfully deprives members of the opportunity to work, study or participate in the KWU community in an environment free from unsolicited and unwelcome sexual advances, (b) constitutes a request for sexual favors or (c) consists of other sexually offensive verbal or physical conduct. Sexual harassment has many different definitions, and it is not the intent of this policy to limit its definition, but to give as much guidance as possible concerning what activities may constitute sexual harassment.

Prohibited conduct includes, but is not limited to, unwelcome sexual advances, requests for sexual favors and other similar verbal or physical contact of a sexual nature when:

- Submission to such conduct is either an explicit or implicit condition of a member’s status at KWU;

- Submission to or rejection of such conduct is used as a basis for making a decision related in any way with a member's performance or evaluation of performance at KWU;
- The conduct unreasonably interferes with a member's performance at KWU; or
- The conduct creates a hostile, intimidating or offensive environment for the member at KWU.

Sexual harassment may be female to male, female to female, male to female, or male to male. Similarly, other unlawful harassment may be committed by and between individuals who may or may not share the same protected characteristics, such as race or age.

## **B. Salient Features**

Behavior may constitute sexual harassment no matter how delivered – in person, electronically or otherwise. Actions that may result in charges of sexual harassment include, but are not limited to, the following:

- (a) Unwelcome physical contact, including touching on any part of the body, kissing, hugging or standing so close as to brush up against another person;
- (b) Requests for sexual favors either directly or indirectly;
- (c) Attempting in any way, explicitly or implicitly, to require sexual conduct as a condition of matriculation, continued student or employee status, employment, obtaining a raise, obtaining new duties or any type of advancement, as well as implying or threatening expulsion or termination or unfairly evaluating performance;
- (d) Attempting in any way, explicitly or implicitly, to require a member to perform certain duties or responsibilities simply because of his/her gender or other protected characteristics; or
- (e) Attempting in any way, explicitly or implicitly, to require a member to submit to sexual conduct by a vendor, customer or other third party.

Other behavior that may seem innocent or acceptable to some people may constitute sexual harassment to others. Such behavior may include, but is not limited to:

- (a) Unwelcome sexual flirtations, advances, jokes or propositions;
- (b) Unwelcome comments about an individual's body or personal life;
- (c) Open discussion of intimate details of one's own personal life;
- (d) The use of sexually degrading words to describe an individual;

(e) The display in the workplace of objects, pictures, cartoons or writings that might be perceived as offensively, sexually suggestive.

The university requires that professors who teach courses in which sexually explicit materials are a part of the curriculum because of the nature of such courses, e.g. human biology, publicize course content in advance and conduct such classes with appropriate decorum and sensitivity.

## **VI. OPTIONS FOLLOWING AN ACT OF SEXUAL MISCONDUCT OR UNLAWFUL HARASSMENT**

A member of KWU's community who is the victim of sexual misconduct (or unlawful harassment), has knowledge of a third party victim of sexual misconduct (or unlawful harassment), or believes in good faith that he/she has witnessed a possible warning sign of sexual misconduct (or unlawful harassment) as defined herein is urged to make a formal report to the police, Student Development Office and/or KWU Provost, as appropriate.

Whether or not the individual makes a formal report, all victims of sexual misconduct are urged to seek appropriate help, which may include a medical evaluation and obtaining information, support, and counseling, either on or off campus. Victims should use the resources listed in this policy to assist them in accessing the full range of services available.

### **A. Medical Treatment**

A person who is the victim of sexual misconduct is urged to seek appropriate medical evaluation as promptly as possible.

- For life-threatening conditions, call 911.
- For all other situations, see Procedures For Sexual Assault in the Student Handbook, and Attachment 1 to this policy (“Attachment 1”).

### **B. Medical-Legal Evidence Collection**

A person who is the victim of sexual misconduct (particularly rape, forcible oral copulation, or sodomy) is encouraged to request collection of medical-legal evidence. Collection of evidence entails interaction with police and a police report. Prompt collection of physical evidence is essential should a person later decide to pursue criminal prosecution and/or a civil action. See Attachment 1.

### **C. Obtaining Information, Support, and Counseling**

Whether or not one makes a formal report, a person who is the victim of sexual misconduct is encouraged to obtain information, counseling, and support. Counselors at a variety of agencies, both on and off campus, can help a person decide what steps to take, such as seeking medical attention, preserving evidence, obtaining counseling, or filing a report with authorities.

Information, support and advice are available for anyone who wishes to discuss issues related to unlawful harassment or sexual misconduct, whether or not an act constituting either has actually occurred, and whether or not the person seeking information has been harassed, assaulted, accused of an act of harassment or sexual misconduct, or is a third-party.

The degree to which confidentiality can be protected depends upon whether KWU has a legal duty to respond to the allegations and the professional role of the person consulted, as well as the “due process” rights of any accused. The scope of confidentiality should be addressed by that professional person before specific facts are disclosed.

See Attachment 1, for a list of resources. Students should use the Office of Student Development as a prime source of support and information, and employees and all other members, the KWU Provost’s Office.

#### **D. Formally Reporting An Act of Sexual Misconduct or Unlawful Harassment**

A person who is the victim of sexual misconduct or unlawful harassment, has knowledge of a third party victim, or believes in good faith that he/she has witnessed a possible warning sign of such behavior is encouraged to make a formal report to:

- The designated campus administrator; and/or
- Local law enforcement authorities, as appropriate.

See Attachment 1.

Whether or not a witness or victim elects to report an act of sexual misconduct or the warning signs of to the police, he or she is urged to make a formal report directly to the parties identified herein and in Attachment 1.

KWU has a board-approved policy and procedures in place for the confidential reporting by members of issues such as unlawful harassment and sexual misconduct.

Reporting of incidents should be accomplished pursuant to the specific recommendations in Attachment 1. These procedures are also published in the Handbooks and on the KWU website.

### **VII. POLICY ENFORCEMENT**

#### **A. Disciplinary Action**

All reported alleged incidents of sexual misconduct will be reviewed and investigated if appropriate. If the evidence supports the allegation, the appropriate KWU judicial procedures will be initiated. For proven violations, possible sanctions may include, but are not limited to, expulsion, suspension, removal from campus, cancellation of contract and/or termination of employment. Other members of KWU's community who are not subject to an explicit judicial procedure, upon a finding of a violation, shall

be subject to removal from campus, cancellation of contract or other sanctions necessary, in the discretion of the University, to address the behavior. Reported alleged incidents of unlawful harassment will be reviewed and investigated. Possible sanctions may include but are not limited to warnings, verbal reprimands, written reprimands and the “flagging” of the incident in the member’s KWU file, and/or any of those mentioned above, if appropriate.

**B. Non-Retaliation**

KWU prohibits retaliation of any sort against a person bringing a complaint or otherwise cooperating in the investigation of a complaint. Accordingly, the initiation of a bona fide complaint of sexual misconduct or unlawful harassment or cooperation in such an investigation will not adversely affect that member’s status/position, evaluation, wages, advancement, assigned duties, shifts or any other aspect of the member’s experience at KWU. Conversely, because such matters warrant such serious attention, allegations that are found to be intentionally or recklessly false may result in disciplinary action against the accuser. Should a member feel he or she is being retaliated against, he or she should report such action immediately as otherwise described herein.

**C. Improper Conduct During an Investigation**

Any member of the KWU community who knowingly provides false information or who refuses to cooperate in an investigation related to this policy will be subject to disciplinary action, potentially including expulsion, suspension, termination of employment, removal from campus, cancellation of contract or any other sanction necessary, in the discretion of the University, to address the behavior.

**VIII. INSTITUTIONAL RESPONSES**

**A. Public Information**

All requests from the media, the campus community at large or the general public, for information concerning an alleged incident of unlawful harassment or sexual misconduct should be directed to the KWU Provost. Failure to comply with this requirement may subject a member to possible sanctions including, but not limited to, expulsion, suspension, removal from campus, cancellation of contract and/or termination of employment.

**B. Public Notification of Incidents**

As required by law, KWU collects and annually reports statistical information concerning sexual misconduct occurring within its jurisdiction. To promote public safety, KWU also alerts the campus community to incidents and trends of immediate concern.

### **C. Relationship Counseling**

Consensual relationships, of an intimate nature, between faculty or staff and students and/or between supervisor and employees are inherently problematic, and should generally be avoided. The power differential present in such relationships may render consent void or voidable and create grounds for an unlawful harassment complaint. As a preemptive measure, all such relationships of a romantic and/or physically intimate nature must be disclosed to the Provost of the university in writing, with a statement of consent to a couples/individual interview(s) with the Provost who will schedule any such interview(s), in his/her discretion, and, if scheduled, (a) conduct the interviews with sensitivity befitting the private nature of the subject matter, in an atmosphere of civility and decorum and (b) memorialize the content of the interview(s)/discussion(s) in writing for (i) the record to be maintained in the Provost's office and/or (ii) inclusion in the appropriate university personnel/administrative/faculty/student file(s).

ATTACHMENT NO. 1: Procedures for Sexual Assault, excerpted from the Student Handbook, as revised.

ATTACHMENT NO. 1 TO KANSAS WESLEYAN UNIVERSITY SEXUAL MISCONDUCT AND UNLAWFUL HARASSMENT POLICY, DATED DECEMBER 21, 2010.

**PROCEDURES FOR SEXUAL ASSAULT**

**A. Victims/Survivors**

1. Victims/survivors are encouraged to receive medical attention. Salina Regional Health Center (SHRC) is equipped with a SANE/SART (Sexual Assault Nurse Examiner/Sexual Assault Response Team) program. The SANE nurse will be able to assist you in receiving a thorough exam and collecting evidence.
2. Victims/survivors are encouraged to contact the Salina Police Department to report the assault.
3. Victims/survivors are encouraged to contact The Domestic Violence Association of Central Kansas (DVACK). The DVACK Sexual Assault Victims Advocate can come to the hospital, be with you during the exam, offer support during interviews with investigators and/or campus officials, and be present with you during any and all court proceedings. DVACK can be reached 24 hours a day/7 days a week at 785-827-5862 or 1-800-874- 1499.
4. Victims/Survivors are also encouraged to contact KWU officials for appropriate action.
  - a. If the assault occurs in a Campus Residence Hall, the victim/survivor should contact the on-duty RA/RD (Resident Assistant/Resident Director) at the following phone numbers:
    - a. Duty phone 1: 785-643-5160
    - b. Duty phone 2: 785-577-6214
    - c. Student Development Office (during business hours): 785-827-5541, ext. 1164 or 1168
  - b. If the assault occurs in the Campus Apartments or on campus grounds, (not a Residence Hall) the victim/survivor should contact the Vice President and/or Executive Director for Student Development (785-827-5541 ext. 1164 or 1168).
  - c. If the assault occurs off-campus and the victim/survivor or accused student resides in on-campus housing the victim/survivor should contact Vice President and/or Executive Director for Student Development (785-827-5541 ext. 1164 or 1168).
  - d. If the assault occurs off-campus and the student resides off-campus, the student should contact the Salina Police Department, the Salina Regional Health Center and/or DVACK. The victim/survivor should also contact the Vice President and/or Executive Director for Student Development (785-827-5541 ext. 1164 or 1168).
  - e. If a student is accused, report it to the Vice President and/or Executive Director for Student Development.
  - f. If an employee is accused, report it to the Executive Vice President and Provost.

**B. University Employees/Students** (when made aware of an assault incident)

1. Encourage victim/survivor to make a report to the Salina Police Department.
2. Encourage Victim/Survivor to contact DVACK for support and counseling from the Sexual Assault Victims Advocate.
3. Recommend crisis intervention

4. Provide help in receiving medical attention
5. Provide counseling
6. Recommend Sexual Assault Support Group
7. Discuss PFA (Protection from Abuse), PFS (Protection from Stalking), Restraining Order possibilities
8. Discuss the availability of the civil justice system, SPD Investigation, Personal Advocacy (referrals, navigation of action through university system, etc.).
9. Contact the Office of Student Development or the Office of Academic Affairs for guidance on the next step, to:
  - a. Maintain confidentiality
  - b. Assist in obtaining services from DVACK
  - c. Assist and support Victim/survivor in contacting Salina Police Department and University Officials if the victim/survivor consents to such action. (The staff member may be required to report incident, but will only divulge victim's name if consent has been given, except in extenuating circumstances.)
  - d. Assist in changing academic programming, current housing, etc., if requested.
  - e. Allow victim/survivor and person accused to have non-participating support person present for all interviews.

The Office of Student Development or Provost's Office, as appropriate, will conduct an independent investigation by responding to the allegations and handing down discipline, if needed, which is consistent with the findings of the Judiciary Committee and finalized with the approval of the President of KWU, irrespective of whether there is a formal, police investigation conducted.

#### **PROCEDURES FOR UNLAWFUL HARASSMENT**

- A. Students:** Use the method outlined in A 4, above in Procedures For Sexual Assault, to report the matter to KWU officials, unless the gravity of the situation indicates a need to contact the police and/or other agencies also indicated in paragraphs A and B, in which case those entities should also be notified.
- B. Other Members of the KWU Community:** Contact the KWU Provost as described in the Employee Handbook (785) 827-5541 ex. 1282, or any of the other agencies indicated in the Procedures For Sexual Assault, above, if the gravity of the situation indicates the need to do so.