Records shed light on sexual misconduct at state universities

A Murray State University lecturer continues to teach four classes a semester after the university found he “inappropriately” touched, kissed and asked a student to be photographed nude and was accused of harassment by three other women.

An Eastern Kentucky University professor quietly resigned after the university determined he sent more than 25 sexually explicit emails to a student in his class. He now teaches at a university 800 miles away.

A Western Kentucky University assistant professor accused of misconduct resigned for the following year, ending the university’s investigation. WKU refuses to release information on six employees who were found to have violated the university’s sexual misconduct policy since 2013 because the employees resigned before “final action.”

Across the state, employees have been found in violation of misconduct policies for creating “hostile” environments, “inappropriately” touching students and having sexual relationships with students. In most cases, the public learns little about the allegations or the results of the university’s investigations.

A review of more than 1,200 pages of records obtained through public records requests to seven Kentucky universities revealed 62 employees in violation of their universities’ sexual misconduct and discrimination policies since 2011. Fewer than half of the employees were terminated from their positions. Some resigned and moved to other universities, which would be unlikely to know about the misconduct.

Other employees received punishments ranging from warnings to sexual harassment training sessions and were allowed to remain in the classroom or on staff. These statistics do not include incidents at schools such as WKU and Kentucky State University, that refused to release records related to sexual misconduct and discrimination altogether.

All seven universities cited privacy laws such as the Family Educational Rights and Privacy Act (FERPA) and Title IX to withhold or redact the records.

Deborah Wilkins, general counsel at WKU, said the decision to completely withhold records is intended to protect victims.

“I have to weigh the person’s privacy interests against the public’s right to know,” Wilkins said. “I don’t see how disclosing that type of information is more important than having a system that works, that helps the victim and that gives them a place to confidentially come forward with a complaint.”

Critics say universities are protecting perpetrators by hiding sexual misconduct from other students and the public.

Was this employee telling the occasional off-color joke or was this employee pressuring students to submit to sex in exchange for grades?” questioned Frank Monte, director of the Student Press Law Center, who has more than 20 years of experience dealing with similar cases.

“The public doesn’t need to know the accuser, but they certainly need to know how serious the behavior was,” he added.
A student told the Office of Equal Opportunity about a lecturer at Murray State.

Repeat offenders not taken out of the classroom

A cross the state at least 31 em-
ployees who were found to have violated sexual miscon-
duct and discrimination poli-
cies, but they did not keep their positions at Kentucky public universities.
The first student submitted a com-
plaint to the Office of Equal Opportu-
nity after two semesters of "sexual and verbal harassment," according to doc-
uments obtained from Murray State University.

The student told the Office of Equal Opportu-
nity that Magee of-
tered her a drink from the tequila bottle lying in the backseat of his car after a field trip.
The student said he then reached across the seat, put his hand on her knee and kissed her, she said in her complaint.

Magee then told the woman he wanted to take nude picture of her and he assured her they would be "labeled," she told the Office of Equal Opportunity.

"I feel ashamed at how much I have
done to this man," the woman said in her complaint. "I kept telling myself that I could handle it in a better grade if they "flashed him," she said in her complaint.

"I really have done nothing wrong when I first met him," the student said.

The student decided to come for-
ward after "two young girls" in her class claimed Magee had made them take nude pictures of their knees.

"This was made my whole life a living hell," she told the Office of Equal Opportu-
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Offenders move on to work at other universities

Employees' positions are terminated or they resign or retire after a violation, their case is often not made public and they are able to work at other universities. At least eight of the 62 employees who violated university policy are working at other schools scattered across the country, according to the records the Herald was able to obtain.

"Heavily redacted or not, the Equal Opportunity Office report is available to the public, and they have been able to work at other universities," said Andrea Lee, Title IX coordinator. The universities protect this information by heavily redacting public documents on these cases. Other universities, like WKU and Kentucky State University, generally refuse to release the documents at all.

At WKU, six employees have violated the university's sexual misconduct policy since 2013, according to Andrea Anderson, Title IX coordinator. The university says because the employees re-signed before "final action" was taken, it does not have to release the records. A spokeswoman for WKU said it does not respond to multiple attempts by the Herald to reach him by phone and email.

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Universities withhold records to ‘protect victims’

In an opinion piece submitted to the Herald, WKU President Gary Ransdell said the university is withholding sexual misconduct and discrimination records to protect the safety and privacy of the victims.

“Only the victim has the right to choose to make a crime against him or her public,” Ransdell wrote.

WKU denied the Herald’s request to inspect records of university sexual misconduct policy violations, citing various exceptions to the Kentucky Open Records Act.

Among the exceptions was a provision that allows records that are “preliminary in nature” to be withheld — meaning the investigation hasn’t officially concluded.

These records include the investigations of six employees who have violated WKU’s discrimination and sexual misconduct policy since 2013 and have resigned.

Attorney Jon Fleischaker, who was instrumental in the creation of the Kentucky Open Records Act, said WKU calling the records “preliminary” is inaccurate.

“Once it’s done, it’s done,” said Fleischaker, who has consulted for the Herald on Kentucky open records laws.

“Since the initial complaint resulted in the resignation of a university employee, those records are no longer preliminary.”

The Kentucky Attorney General’s Office found WKU in violation of the Open Records Act in January and ordered the university to turn over the records to the Herald.

WKU then sued the Herald in February to appeal the ruling — the school’s only option other than releasing the records.

LouMonte of the Student Press Law Center believes there is an incentive for universities to conceal the fact that many harassment complaints go unpunished in order to protect their images.

LoMonte said public universities are now relying on student retention and outside donations more than ever, according to a Center of Budget and Policy Priorities report.

In Kentucky, per-student funding for universities is down by more than 30 percent since the start of the Great Recession. Additionally, Kentucky is one of 12 states to cut per-student funding consecutively in 2015 and 2016, according to the report.

Because of higher education cuts across the nation, the funding market has gotten more competitive and colleges are more image-conscious, LoMonte said.

“There is almost nothing more damaging to recruitment than having the public believe you are a college where the professors sexually harass the students,” he said.

LoMonte, who has more than 20 years experience dealing with similar cases, believes there is a public interest in knowing how cases of serious sexual misconduct are handled.

“The proper solution is to redact the names and any personal identifiers of victims, he said. "In a normal investigation, that should be very much possible to do. Just give the public the facts.”

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Instead, many universities refuse to release sexual misconduct records or heavily redact the records to the point where the severity of the misconduct is unidentifiable, leaving the public in the dark.

“We don’t let government agencies decide that certain records are confidential because they’re afraid of the conclusions the public is going to jump to,” LoMonte said. “The public needs to know if serious wrongdoings are being adequately punished.”

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**STEPS OF A HYPOTHETICAL TITLE IX INVESTIGATION**

*This information was obtained from an interview with WKU Title IX Coordinator Andrea Anderson in February.*

1. A student submits a complaint to the Title IX office at WKU.

2. Title IX conducts a “thorough” investigation of the complaint including, but not limited to, interviews with students, witnesses and colleagues.

3. Title IX officials decide if there is a policy violation or not.

4. If Title IX officials feel there is a policy violation, they will “hypothetically” say to the employee:

   - “Things don’t look good.”
   - “You know what the accusations are, you admit you did wrong.”
   - “You admit to the things we are basing this policy violation on.”

5. The employee may choose to resign or retire.

6. This leaves the investigation “open” or “unconcluded” and ends it.

7. The Title IX office can only ensure they no longer work for WKU.

8. Title IX does not have the ability to keep them from getting future employment.

9. At WKU, their personnel file is marked “ineligible for rehire.”

10. If a future employer calls and asks why, Human Resources cannot explain why.