



1.4.1P

Volume 1, Governance

Chapter 4, Equal Opportunity/Affirmative Action

Section 1, Non-Discrimination and Harassment

Approval Authority: Board of Regents

Responsible Executive: President

Responsible Office(s): President

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Non-Discrimination and Harassment¹

Policy Statement

Eastern Kentucky University (the "University") adheres to all federal and state civil rights laws banning discrimination in public educational institutions. The University prohibits discrimination against any employee, applicant for employment, student, or applicant for admission on the basis of age (40 and over), race, color, religion, sex, sexual orientation, gender identity, gender expression, pregnancy, ethnicity, national origin, disability, veteran status, and/or genetic information. This policy also prohibits aiding or inciting another person or persons to violate this policy. The University prohibits Retaliation against those members of the campus community who participate in any complaint process under this policy, 1.4.1.R Response to Non-Discrimination and Harassment Regulation or administered by the Equal Employment Opportunity Commission (EEOC), the Kentucky Commission for Human Rights (KCHR), the Office for Civil Rights (OCR), and local civil rights agencies.

The University affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise.

The University may respond to any incident or behavior that could have an on-campus impact or otherwise infringes upon the educational mission of the University, even if the incident or behavior occurred off-campus or online.

Reports of Discrimination, Harassment, and/or Retaliation should be made to the Office of Equity and Inclusion or the Title IX Coordinator/Deputy Coordinators promptly, but there is no time limitation on the filing of complaints with the University. All reports are acted upon in a timely manner and every effort is made, to the extent permitted by law, to maintain privacy. Reports of Discrimination on the part of the Title IX Coordinator or the Executive Director of the Office of Equity and Inclusion ("OEI") should be reported to the President in Coates 107, 859-622-2101.

The University affirms its commitment to a fair, equitable, and transparent process that respects due-process rights.

This policy applies when the Executive Director of OEI or the Title IX Coordinator determines that the conduct relates to a Protected Class or to Protected Behavior and includes:

a) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law committed in the municipality where the University or any of its extended campuses is located, or committed while representing the University or when participating in University-associated events or programs regardless of the location; and

b) Any situation that is detrimental to the interests of the University.

Any online postings (e.g., Facebook, Twitter, etc.) or other electronic communication by students or employees occurring completely outside of the University's control (e.g., not on University-owned or operated computing

¹ This policy is adapted with permission from "The NCHERM GROUP/ATIXA Model Policy and Procedure for Civil Rights Equity Grievance Resolution for All Faculty, Students, and Employees. 2013 THE NCHERM GROUP, LLC/ATIXA.

hardware, networks, websites, or between/among University email accounts) will be subject to this policy when those online behaviors can be shown to relate to membership in a Protected Class and cause a substantial disruption to the University's educational, employment, residential, or social environment.

Off-campus discriminatory or harassing speech by employees may be regulated by the University when such speech is made in an employee's official or work-related capacity and/or when such speech causes a disruption to the educational or work environment.

Inquiries

Inquiries about this policy and procedure may be made internally to:

Joslyn Glover, Chief Equity Officer and Title IX Coordinator, Office of Institutional Equity
521 Lancaster Ave.
Jones Building, Suite 417
(859) 622-1327
Joslyn.Glover@eku.edu

John W. Dixon, Director, Office of Equity and Inclusion
521 Lancaster Ave.
Jones Building, Suite 416
(859) 622-8221
John.Dixon@eku.edu

Lindsey A. Carter, Investigator, Office of Equity and Inclusion
521 Lancaster Ave.
Jones Building, Suite 416
(859) 622-3541
Lindsey.Carter@eku.edu

Inquiries may be made externally to:

Equal Employment Opportunity Commission (EEOC)
Contact: <http://www.eeoc.gov/contact/>

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Kentucky Commission on Human Rights
331 South Broadway, 7th Floor
Louisville, KY 40202
502-595-4024
TDD: 502-595-4084

You do not have to make an internal complaint in order to file a complaint with the above-named civil rights agencies.

Entities Affected by the Policy

All University Community Members, which includes all faculty, staff, students, and Board of Regents members as well as anyone doing business for or with the University.

This policy applies to students, faculty, staff, and members of the campus community. Alleged violations of this policy are subject to resolution using the process detailed herein and in Regulation 1.4.2, Response to Non-Discrimination and Harassment and are not subject to grievance and appeal procedures outlined in the Policy 4.6.16, Dismissal of Faculty; Policy 8.3.1, Staff Grievances; Policy 4.7.4, Faculty Grievances; or the Student Code of Conduct.

Policy Background

This policy combines and replaces Policy 1.4.1, Equal Opportunity/Affirmative Action (Non-Discrimination) and Policy 1.4.2, Sexual Harassment. This policy incorporates guidance related to Title IX and sexual violence issued by the United States Department of Education, Office for Civil Rights, on April 29, 2014, as well as protections on the basis of gender identity.

Policy Procedures

I. Non-discrimination and Harassment

This policy prohibits Discrimination and Harassment in employment and in access to educational opportunities on the basis of actual or perceived membership in a Protected Class. Any such Discrimination or Harassment will be appropriately addressed by the University according to this policy.

This policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

Deliberately false and/or malicious accusations of Harassment, Discrimination, or Retaliation are serious offenses and will be subject to appropriate disciplinary action.

For assistance with conflict resolution techniques or mediation services, individuals should contact the Office of Equity and Inclusion.

II. Accommodation of Disabilities

Procedures for requesting an accommodation may be found in Policy 1.3.4R, "Establishing Reasonable Accommodations under the Americans with Disabilities Act ("ADA")/Section 504 of the Rehabilitation Act Compliance Regulation and Appeals Procedures." Requests for accommodations should be directed to the Office of Services for Individuals with Disabilities.

III. Retaliation

Retaliation against an individual for alleging Harassment, Discrimination, or Sexual Misconduct, for supporting a person filing a complaint of Harassment, Discrimination, or Sexual Misconduct, for assisting in providing information relevant to a claim of Harassment, Discrimination, or Sexual Misconduct, or for otherwise participating in an investigation of a complaint of Harassment, Discrimination or Sexual Misconduct is a serious violation of this policy. Acts of alleged Retaliation should be reported immediately to the Title IX Coordinator or OEI and will be promptly investigated. The University will take appropriate steps to protect individuals who fear that they may be subjected to Retaliation.

IV. Initial Remedial Action

When appropriate, the University will implement initial interim, remedial, and responsive and/or protective actions upon notice of alleged Harassment, Sexual Misconduct, Retaliation, and/or Discrimination. Such actions may include but are not limited to:

- no-contact orders (for students only, may also be imposed as a sanction);
- providing counseling and/or medical services;
- academic support;
- living arrangement adjustments;
- academic or work schedule and assignment accommodations;
- safety planning; and
- referral to campus and community support resources.

The University will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest, or visitor who has been found to engage in Harassing or Discriminatory behavior or Retaliation. Procedures for handling reported incidents are described below.

V. Reporting of Offenses Under This Policy

University employees have obligations to report allegations of misconduct to OEI or the Title IX Coordinator. Failure to report allegations of misconduct may result in disciplinary action up to and including termination. Some employees, such as university-employed counselors, are permitted to maintain confidentiality of reports. Information received as part of an IRB-approved research project in which research subjects have been promised confidentiality is not subject to the reporting procedures outlined herein and researchers should adhere to the practices approved by the IRB. The information below provides more details as to the reporting obligations of specific employees.

A. Formal Reporting Options: Individuals bringing complaints under this policy are encouraged to speak to University officials, OEI, or the Title IX Coordinator/Deputy Coordinators to make formal reports of violations of this policy. Information will be shared as necessary with investigators, witnesses, and the respondent (the person accused of violating this policy). These employees will keep reports private, but they will not be confidential.

B. Confidential Reporting (applies to cases of sexual misconduct ONLY): If a reporting party would like the details of an incident to be kept confidential, the reporting party should speak with the following individuals:

For Students:

- Counseling Center staff;
- Student Health Services staff;
- Service providers in the Psychology Clinic; and
- Practicing physicians whether independent contractors or employed.

Campus counselors and counseling services are available to help students free of charge and can be seen on an emergency basis during normal business hours (<http://www.counseling.eku.edu/>).

The University's Counseling Center, Student Health Services staff, and providers in the Psychology Clinic will submit anonymous statistical information for reporting purposes pursuant to the Clery Act purposes unless they believe disclosing information to appropriate officials is necessary to protect their client or patient from harm, or if there is a report of threat of violence to a minor. In such instances, they will provide non-confidential reports.

For Employees and Students:

- Service providers in the Psychology Clinic;
- Off-campus local rape crisis counselors;
- Domestic violence resources;
- Off-campus local or state assistance agencies; and
- Off-campus members of the clergy.

If the reporting party is an employee, and he or she would like details of an incident or conduct to be kept confidential, he or she may seek assistance through the Employee Assistance Program (<http://wellness.eku.edu/eap>) or any off-campus local rape crisis counselor, any off-campus mental health provider, domestic violence resources, campus local or state assistance agencies, or members of the clergy who will maintain confidentiality.

Confidentiality may not be honored in cases of an immediate threat of danger or abuse of a minor.

VI. Timely Warning Obligation

The University is obligated by law to issue timely warnings for incidents reported to it that pose a substantial threat of bodily harm or danger to members of the campus community. The University will make every reasonable effort to ensure that a victim's identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

Definitions

Age Discrimination

Age discrimination involves treating someone less favorably because he or she is age 40 or older.

Business Day

A business day is a day during which University offices are open.

Consent

Consent means words or actions demonstrating a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Consent is determined based on the totality of the circumstances. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. Silence or the absence of resistance alone is not consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately. Consent cannot be obtained by force, by ignoring or acting in spite of the objections of another, or by taking advantage of the incapacitation of another.

A person cannot consent if he or she is under the age of 16 (KRS 510.020), is unable to understand what is happening, or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who knowingly acts sexually upon another person who is physically or mentally incapacitated has violated this policy.

**Dating/Domestic/
Intimate Partner
Violence**

A pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another, intimate partner.

Disability	See Regulation 1.3.4, Establishing Reasonable Accommodations Under the Americans with Disabilities Act (“ADA”)/Section 504 of The Rehabilitation Act Compliance, for definition and details on accommodations.
Discrimination	Discrimination is defined as actions that deprive or limit access to education, employment, benefits, or other opportunities on the basis of an individual’s actual or perceived membership in a Protected Class.
Force or Coercion	The term “force” or “coercion” means (1) threats of serious physical, emotional, or psychological harm to or physical restraint against any person, or (2) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person.
Gender Expression	Gender expression is how someone expresses gender through appearance, behavior, or mannerisms. A person’s Gender Expression may or may not be the same as the Gender Identity or assigned sex at birth.
Gender Identity	Gender identity is the individual’s internal sense of being male, female, transgender, or other gender.
Genetic Information	Genetic information includes information about an individual’s genetic tests and the genetic tests of an individual’s family members, as well as information about the manifestation of a disease or disorder in an individual’s family members (i.e., family medical history).
Hostile Environment	A hostile environment may be created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent/pervasive, and objectively offensive that it interferes with, limits, or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits, or opportunities.
Incapacitation	Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the consumption of alcohol or other incapacitating drugs. A person can be intoxicated without being incapacitated.
Intimidation	Intimidation is defined as an actual or implied threat or act that causes fear of harm in an individual on the basis of actual or perceived membership in a Protected Class.
National Origin	National-origin discrimination involves treating people (applicants or employees) unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not). National-origin discrimination also can involve treating people unfavorably because they are married to (or associated with) a person of a certain national origin or because of their connection with an ethnic organization or group.
Non-Consensual Sexual Intercourse	Non-Consensual Sexual Intercourse is defined as any sexual penetration or intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without Consent and/or by force.
Non-Consensual Sexual Contact	Non-Consensual Sexual Contact is defined as any intentional sexual touching, however slight, with any object, by a person upon another person that is without Consent and/or by force.
Pregnancy Discrimination	Pregnancy discrimination involves treating a woman (an applicant or employee) unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.
Preponderance of the Evidence	More likely than not.

Protected Activity	A protected activity pursuant to this policy includes making a report of Discrimination, Harassment, or Sexual Misconduct, or otherwise participating in an investigation of such a report.
Protected Class	A group of people protected from Discrimination and/or Harassment based upon membership in the specific group. Under this policy, Protected Classes include age (40 and over), race, color, religion, sex, sexual orientation, gender expression, gender identity, pregnancy, ethnicity, national origin, disability, veteran status, and genetic information.
Race/Color	Race discrimination involves treating someone unfavorably because he or she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion. Race/color discrimination also can involve treating someone unfavorably because the person is married to (or associated with) a person of a certain race or color or because of a person's connection with a race-based organization or group, or an organization or group that is generally associated with people of a certain race or color.
Retaliation	Any adverse action a University Community Member experiences as a result of the University Community Member making an Inquiry, participating in an investigation, or making a reasonable good-faith Report of possible non-compliance with Laws, Regulations, and Policies
Religion	<p>Religious discrimination involves treating a person unfavorably because of his or her religious beliefs or because she or he does not subscribe to a belief system. The law protects not only people who belong to traditional, organized religions such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical, or moral beliefs.</p> <p>Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion or because of his or her connection with a religious organization or group or because he or she does not subscribe to a belief system.</p>
Sexual Exploitation	<p>Sexual Exploitation is the use of non-consensual or abusive sexual advantage of another, and includes situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse, or Non-Consensual Sexual Contact.</p> <p>Examples of Sexual Exploitation include, but are not limited to:</p> <ul style="list-style-type: none"> • Sexual voyeurism (such as watching a person undressing, using the bathroom, or engaging in sexual acts without the consent of the person observed); or • Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or distributing sexual pictures without the photographed person's consent); • Prostitution; • Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted infection (STI) and without informing the other person of the infection; and • Administering alcohol or drugs to another person without his or her knowledge or consent.
Sexual Harassment	<p>Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:</p> <ul style="list-style-type: none"> • Submission to such conduct is either explicitly or implicitly a term or condition of an individual's education or employment; • Submission to or rejection of any such conduct by an individual is used as a basis for education or employment decisions; or • Such conduct is sufficiently severe or pervasive to alter the conditions of or have the purpose or effect of substantially interfering with an individual's work or academic performance by creating an intimidating, hostile, or offensive working or education environment.

Sexual Harassment does not include verbal expression or written or electronic material relevant and appropriately related to course subject matter or curriculum. This policy shall not abridge academic freedom nor the University's educational mission.

Sexual Misconduct	The Commonwealth of Kentucky defines various violent and/or non-consensual sexual acts as crimes in KRS 510. The University may take action in cases in which no criminal charges are filed and its procedures are substantively different from those used in the criminal justice system. The University considers the following violations to be sexual misconduct: Sexual Harassment, Dating/Domestic/Intimate Partner Violence, Non-consensual Sexual Contact, Non-consensual Sexual Intercourse, Sexual Exploitation, and Stalking.
Stalking	Stalking is a course of conduct directed at a specific person on the basis of actual or perceived membership in a Protected Class that is unwelcome and would cause a reasonable person to feel fear.
University Community Member	All faculty, staff, students, and Board of Regents members as well as anyone doing business for or with the University.
Veteran	The term "veteran" means a person who served in the United States active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

Responsibilities

The Office of Equity and Inclusion, in coordination with the Title IX Coordinator/Deputy Coordinators, is responsible for administering this policy.

Violations of the Policy

The University will act on any complaint or notice of violation of this policy that is received by the Title IX Coordinator/Deputy Coordinators, OEI, or any employee, including faculty, staff, and residence assistants. It is the University's decision whether or not to initiate an investigation into any report of a possible violation of this policy. The procedures for responding to violations of this policy are contained in Regulation 1.4.2, Response to Non-Discrimination and Harassment.

Interpreting Authority

Title IX Coordinator (for issues of discrimination on the basis of sex/gender)
Executive Director of the Office of Equity and Inclusion (for all other issues within the policy)

Statutory or Regulatory References

Executive Order (EO) 11246
The Vietnam Era Veterans' Readjustment Assistance Act (VEVRA)
Pregnancy Discrimination Act of 1978
Title IX, of the Education Amendments of 1972
Immigration Reform and Control Act of 1990 (IRCA)
Title VII of the Civil Rights Act of 1964
Title IV of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964
 The Civil Rights Act of 1991 (CRA)
 Equal Pay Act of 1963
 Age Discrimination in Employment Act of 1967 (ADEA)
 Title I of the Americans with Disabilities Act (ADA) of 1990
 ADA Amendments Act of 2008 (ADAAA)
 Rehabilitation Act of 1973
 Kentucky Civil Rights Act (KRS 344)
 Genetic Information Nondiscrimination Act of 2008
 Department of Education, Office for Civil Rights Dear Colleague Letter concerning sexual violence dated April 4, 2011
 Department of Education, Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence dated April 24, 2014
 The Family Medical Leave Act of 1993
 Any and all regulations pertaining to the above referenced acts found in the Code of Federal Regulations and/or the Kentucky Administrative Regulations.

Policy Adoption Review and Approval

Policy Revision

<u>Date</u>	<u>Entity</u>	<u>Action</u>
September 25, 2017	Director, Policy and Legal Operations	Editorial Change
June 8, 2015	Vice Provost	Editorial Change
February 2, 2015	Board of Regents	Adopted
December 12, 2014	President Michael T. Benson	Approved
November 5, 2014	Provost Council	Approved
November 3, 2014	Faculty Senate	Approved
October 21, 2014	Student Government Association	Resolution of Support
October 16, 2014	Staff Council	Approved
September 5, 2014	President Michael T. Benson	Adopted Interim
September 27, 2011	Board of Regents	Adopted
July 1, 1999**	Board of Regents	Adopted
July 24, 1992**	Board of Regents	Adopted

Policy Issued

<u>Date</u>	<u>Entity</u>	<u>Action</u>
January 25, 2010*	Board of Regents	Adopted
November 20, 2009*	President Doug Whitlock	Approved
August 1, 1991**	Board of Regents	Adopted

*1.4.1 P Non-Discrimination Policy

**1.4.2 P Sexual Harassment Policy