



Eastern Kentucky University Policy and Regulation Library

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Volume 1, Governance

Chapter 4, Equal Opportunity/Affirmative Action

Section 1, Non-Discrimination and Harassment

Approval Authority: President

Responsible Executive: Executive Director of Equity and Inclusion;
Title IX Coordinator

Responsible Office(s): Equity and Inclusion; Title IX Coordinator

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Response to Non-Discrimination and Harassment¹

Regulation Statement

This regulation establishes procedures for responding to violations of Policy 1.4.1, Non-Discrimination and Harassment. The University affirms its commitment to fair, equitable, and impartial resolution of all complaints made under Policy 1.4.1, Non-Discrimination and Harassment Policy and to creating an inclusive and respectful educational and employment environment.

Inquiries

Inquiries about this regulation may be made internally to:

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Title IX Coordinator
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Jones Building, Suite 416
(859) 622-1327
Joslyn.Glover@eku.edu

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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

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.

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
Email: kchr.mail@ky.gov
Web: <http://kchr.ky.gov>

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.

Regulation Background

This regulation was created to outline the response procedures for alleged violations of the Policy 1.4.1, Non-Discrimination and Harassment. Violations of this policy are subject to resolution using the process detailed herein and are not subject to grievance and appeal procedures outlined in Policy 4.6.16, Dismissal of Faculty; Policy 8.3.1, Staff Grievances; Policy 4.7.4, Faculty Grievances; or Student Code of Conduct.

Reporting and Response Procedures

I. Reporting of Offenses

University employees have obligations to report allegations regarding violations of Policy 1.4.1, Non-Discrimination and Harassment, to the Office of Equity and Inclusion (“OEI”) or the Title IX Coordinator/Deputy Coordinators within seventy two (72) hours of becoming aware of the allegations. Failure to report allegations of misconduct may result in disciplinary action up to and including termination. Some employees, such as 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.

See Policy 1.4.1 for information on prohibited behaviors subject to reporting under that policy.

I. Filing a complaint

Any member of the community, guest, or visitor who believes that this policy has been violated should contact OEI or the Title IX Coordinator/Deputy Coordinators. Employees may also notify their supervisor. Students may notify an administrative advisor or faculty member. Any member of the community may contact ECU Police.

All employees receiving reports of a potential violation of this policy or Policy 1.4.1 are required to contact OEI or the Title IX Coordinator/Deputy Coordinator, as soon as practicable but not more than seventy two (72) hours after becoming aware of a report or incident. Employees who fail to notify OEI or the Title IX Coordinator/Deputy Coordinator of a report or incident within seventy two (72) hours will be subject to discipline up to and including termination.

The University will, to the extent permitted by law, treat all reports with the maximum privacy possible: specific information on any complaints received by any party will be reported to OEI or the Title IX Coordinator/Deputy Coordinators. Subject to the University's obligation to redress violations, every effort will be made to maintain the privacy of those initiating a report or complaint. In all cases, the University will give consideration to the party bringing a complaint with respect to how the complaint is pursued. However, the University reserves the right to investigate and pursue a resolution even when the affected person chooses not to initiate or participate in a formal process when such investigation and resolution are necessary to protect the community.

II. OEI/Title IX Coordinator Receipt of Complaint

Following receipt of notice or a complaint, an initial determination is made whether the complaint falls within the purview of the OEI or the Title IX Coordinator and/or whether conflict resolution might be appropriate. If the complaint does not appear to allege a violation of this policy or if conflict resolution is desired and appears appropriate given the nature of the complaint, then the complaint does not proceed to investigation by OEI or Title IX. For more information about conflict resolution, please see section V(C) below.

The OEI or the Title IX Coordinator will pursue a full investigation if there is initial evidence of a pattern of misconduct or a perceived threat of further harm to the University community or any of its members. At its discretion or at the request of the party bringing the complaint, OEI or the Title IX Coordinator may also pursue a full investigation when the complainant alleges a potential policy violation but does not indicate a pattern of misconduct or perceived threat of future harm. OEI strives to complete investigations within sixty (60) business days of receipt of the complaint. This time period may be extended as necessary for appropriate cause by the OEI and/or Title IX Coordinator/Deputy Coordinator with notice to the parties.

III. Investigation

Investigations will begin after OEI or the Title IX Coordinator determines that the complaint should proceed to investigation. During investigations, regular communication will occur between the OEI or Title IX Coordinator and the complainant (the person bringing allegations of a violation of Policy 1.4.1) and respondent (the person who is alleged to have violated Policy 1.4.1).

Investigations may be delayed briefly when criminal charges based on the same behaviors that initiate this process are being investigated by law enforcement officials. Regardless of the status or outcome of any criminal or civil proceeding, the University, in its discretion or at the request of a complaining party, will proceed with an investigation under this policy. The University's process is separate from and independent of the criminal justice process. All investigations will be thorough, reliable, and impartial. Investigations will include all applicable investigation techniques, including but not limited to interviewing all relevant parties and witnesses, obtaining available evidence, and identifying sources of expert information, if necessary. Parties may bring a silent advisor to meetings with investigators in sexual misconduct cases only.

IV. Interim Remedies

If, in the judgment of OEI or the Title IX Coordinator/Deputy Coordinators, the safety or well-being of any member(s) of the campus community may be jeopardized by the on-campus presence of the respondent, OEI,

the Title IX Coordinator/Deputy Coordinators, or their designee may provide or recommend interim remedies intended to address the short-term effects of Harassment, Discrimination, and/or Retaliation.

- A. Interim Remedies for Students:** Interim remedies available to students may include, but are not limited to, the following:
- i. Referral to counseling and health services;
 - ii. Education to the community;
 - iii. Alteration of the housing situation of an accused student;
 - iv. Alteration of the housing situation of the victim if desired;
 - v. Limitations of contact between the parties;
 - vi. Adjustments to academic deadlines and course schedules; and
 - vii. Other remedies appropriate to each individual situation.
- B. Interim Remedies for Employees:** Interim remedies available to employees may include, but are not limited to, the following:
- i. Referral to the Employee Assistance Program;
 - ii. Education to the community;
 - iii. Alteration of the housing situation of an accused resident employee;
 - iv. Alteration of the housing situation of the victim resident employee if desired;
 - v. Limitations of contact between the parties;
 - vi. Adjustments to work schedules; and
 - vii. Other remedies appropriate to each individual situation.

The University may temporarily suspend or place on leave a student or employee pending the completion of investigation and resolution. The following procedures apply to the imposition of temporary leave or suspension.

- A. Temporary Suspensions of Students:** Alleged policy violations that warrant temporary suspensions are those that appear to present a clear and present danger of harm to the victim, to any other member of the University community, to University property, or to University activities.

Prior to the imposition of any temporary suspension, or as soon thereafter as practicable, the student will be given the opportunity to meet with OEI or the Title IX Coordinator/Deputy Coordinators to demonstrate why the suspension should not be implemented.

During a temporary suspension, a student may be denied access to University housing and/or to the University's campus, facilities, or events. As determined by OEI, the Title IX Coordinator/Deputy Coordinators, or their designee, this restriction includes classes and/or all other University activities or privileges for which the student might otherwise be eligible. At the discretion of OEI, the Title IX Coordinator/Deputy Coordinators, or their designee, alternative coursework options may be pursued to ensure as minimal an impact as possible on the accused student.

Temporary suspensions may be enforced only until final disposition of the case has been made by the appropriate University official or hearing entity and may not exceed a period of five (5) class days.

Temporary sanctions based on the "clear and present danger" principle may be continued, upon the joint recommendation of the Executive Director of OEI and Title IX Coordinator and approval of the President, during the period of appeal to the Student Life, Discipline, and Athletics Committee of the Board of Regents, if applicable.

- B. Temporary Paid or Unpaid Leave for Employees:** In the event that the employee is accused of a violation which also constitutes grounds for immediate dismissal as defined in Regulation 8.3.4, Progressive Disciplinary Action, the Executive Director of OEI or the Title IX Coordinator may recommend that Human Resources place the employee on unpaid leave until such time as the complaint is resolved.

In the event that the violation does not constitute grounds for immediate dismissal, but the continued presence of the employee is disruptive to the work environment, the Executive Director of OEI or the

Title IX Coordinator may recommend to Human Resources that the employee be placed on paid leave pending resolution of the complaint.

Prior to the imposition of any temporary suspension, or as soon thereafter as practicable, the employee will be given the opportunity to meet with the Executive Director of OEI or the Title IX Coordinator to demonstrate why the suspension should not be implemented.

During temporary paid or unpaid leave, an employee may be denied access to the University's campus, facilities, or events. As determined by OEI, the Title IX Coordinator/Deputy Coordinators, or their designee, this restriction includes classes and/or all other University activities or privileges for which the employee might otherwise be eligible. At the discretion of OEI, the Title IX Coordinator, or their designee, alternative work options may be pursued to ensure as minimal an impact as possible on the responding employee and complainant.

V. Complaint Resolution

Upon completion of investigation, the process may or may not continue depending on the information gathered during the investigation.

- A. Evidence Review:** The OEI investigators will meet with the Executive Director of OEI and/or the Title IX Coordinator to review the evidence gathered during the investigation and the OEI investigators' initial determination of whether the evidence supports a finding that a policy violation occurred. The Executive Director of OEI and/or the Title IX Coordinator will conduct a secondary, impartial review of the evidence gathered during the investigation to determine if OEI's initial determination is supported by the evidence.

If the Executive Director of OEI and/or the Title IX Coordinator determine no policy violation has occurred or that the preponderance of evidence (i.e., whether it is more likely than not that the accused individual committed each alleged violation) does not support a finding of a policy violation, then the process will end.

If, after review of the findings of the investigation, the Executive Director of OEI and/or the Title IX Coordinator determine that a preponderance of the evidence supports a finding of a policy violation, the Executive Director of OEI and/or Title IX Coordinator may (1) recommend conflict resolution (if appropriate based on the criteria set forth in VC)(below), (2) move forward to a formal hearing, or (3) make other recommendations as appropriate.

- B. Notice to Parties of Investigative Findings:** After completion of the investigation, the Title IX Coordinator/Deputy Coordinator or OEI staff members will meet separately with the complaining and responding individuals to explain the finding(s) of the investigation.

Complaining and responding individuals may present additional new evidence for consideration within ten (10) business days of the meeting or the date on which they receive notice of the findings, whichever comes last. Investigators will consider such evidence, if appropriate, and issue a finding accordingly. Factual findings of the investigation are final on the eleventh (11th) day after the parties receive notice of the findings or upon receipt of the findings after reconsideration, whichever comes last.

The final factual findings of the investigation may not be altered and are not subject to appeal.

- C. Conflict Resolution for Students and Employees:** Conflict resolution will not be used to address complaints of sexual misconduct or violent behavior of any kind or other serious policy violations. Conflict resolution is often used for less serious yet inappropriate behaviors, and is encouraged as an alternative to the formal hearing process to resolve conflicts. The Executive Director of OEI and/or the Title IX Coordinator will determine if conflict resolution is appropriate based on (1) the willingness of the parties, (2) the nature of the conduct at issue, and (3) the susceptibility of the conduct to conflict resolution.

In a conflict resolution meeting, OEI staff will facilitate a dialogue with the parties to reach an effective resolution. Sanctions are not imposed as the result of a conflict resolution process, though the parties may agree to appropriate remedies. The Title IX Coordinator/Deputy Coordinators/OEI will keep records of any resolution that is reached, and failure to abide by the resolution may result in appropriate responsive actions.

It is not necessary to pursue conflict resolution prior to requesting a formal investigation and resolution process and any party participating in conflict resolution can stop that process at any time and request a formal hearing.

- D. Resolution: Student Respondent:** If the Executive Director of OEI and/or the Title IX Coordinator determine that the preponderance of the evidence supports a violation of this policy, matters involving student respondents will be adjudicated using the following process:

The Title IX Coordinator or OEI will refer the findings to the Equity Complaint Council sanctioning. In accordance with KRS 164.370, the Equity Complaint Council will impose the sanction for any violation for which a possible sanction is suspension or expulsion.

i. Hearing and Sanctioning Procedures

- a. Pre-hearing procedures: After the Title IX Coordinator or OEI has confirmed a finding of facts, investigators will contact and meet with the complainant and respondent separately to discuss the sanctioning process and to schedule a hearing.

At the meeting, OEI's investigative report and other documentation will be presented to the parties. Both parties will be informed of all the statements and evidence provided as well as the names of those providing the evidence to be used at the hearing.

- b. Pre-hearing Procedures: Both parties will receive the "Hearing Format Request" form. The "Hearing Format Request" form provides the student with the available options for participating in the hearing.

c. General Hearing Procedures before ECC:

- The OEI/Title IX investigator will be called as the first witness and will testify as to the findings of the investigation.
- Both the complainant and the respondent may choose to participate in a manner that does not require their presence in the same room as the other student.
- Both the complainant and the respondent are entitled to have one silent advisor present, for sexual misconduct cases only. During the hearing, the silent advisor may confer only with the party she/he is advising and is not permitted to speak to the hearing body or to any other hearing participant before, during, or after the hearing.
- Both the complainant and the respondent have the right to testify on their own behalf. Neither the complainant nor the respondent is required to testify or be present at the hearing.
- Both the complainant and the respondent may hear and question adverse witnesses. Either the complainant or the respondent may choose to direct their questions through the chair.
- Both the complainant and the respondent may rebut unfavorable inferences.
- Both the complainant and the respondent may provide an impact statement.
- Both the complainant and the respondent shall receive concurrent notification of the sanction imposed by the ECC.
- A record shall be made of the hearing and maintained in the OEI in compliance with the State University Model Records Retention Schedule

- d. Sanctions: Factors considered when determining a sanction may include but are not limited to:

- The nature, severity of, and circumstances surrounding the violation;
- An individual's disciplinary history;
- Class standing (hours earned) where necessary to determine the impact of the sanction on the complainant, respondent, or University community. The academic records of the parties shall not be considered in determining sanctions;
- Previous grievances or allegations involving similar conduct;

- Completion of required training related to this policy;
- The need for sanctions to bring an end to the Discrimination, Harassment, and/or Retaliation;
- The need for sanctions/responsive actions to prevent the future recurrence of Discrimination, Harassment, and/or Retaliation; and
- The need to remedy the effects of the Discrimination, Harassment, and/or Retaliation on the victim and the community.

The following are the recommended sanctions that will be imposed upon students who are found to be responsible for specific violations of Policy 1.4.1, Non-Discrimination and Harassment. **Violations of the Non-Discrimination and Harassment Policy that are not listed below will result in appropriate sanctions using the criteria above as a guide.** The sanctions listed below for specific violations of the non-Discrimination and Harassment Policy may be imposed singly or in combination and second or subsequent offenses will receive more severe sanction. Any deviation from the recommended sanctions requires a written rationale from the ECC, which will be retained as part of the hearing record. Sanctions not listed below may be imposed in addition to the recommended sanctions.

Policy Violation	Recommended Sanction
Nonconsensual Sexual Intercourse	Expulsion from the University and permanent eviction and/or restriction from University Housing, as well as permanent restriction from campus. Other sanctions deemed appropriate by the hearing body may also be imposed.
Nonconsensual Sexual Contact	University probation and an educational sanction. More severe sanctions may be imposed according to the intrusiveness of the contact. These may include permanent eviction and/or restriction from University Housing, as well as permanent restriction from campus except for the purpose of attending classes. Other sanctions deemed appropriate by the hearing body may also be imposed.
Retaliation	University probation and an educational sanction. More severe sanctions may be imposed according to the intrusiveness of the contact. These may include permanent eviction and/or restriction from University Housing, as well as permanent restriction from campus. After the suspension is completed, the restriction from University Housing and campus shall continue, except for the purpose of attending classes. Other sanctions deemed appropriate by the hearing body may also be imposed.
Sexual Exploitation	Suspension from the University for a period of not less than one (1) year and permanent eviction or restriction from University Housing, and permanent restriction from campus. After the suspension is completed, the restriction from University Housing and campus shall continue, except for the purpose of attending classes. Other sanctions deemed appropriate by the hearing body may also be imposed.
Stalking	Suspension from the University for a period of not less than one (1) year and permanent eviction or restriction from University Housing, and permanent restriction from campus. After the suspension is completed, the restriction from University Housing and campus shall continue,

	except for the purpose of attending classes. Other sanctions deemed appropriate by the hearing body may also be imposed.
Dating/Domestic/Intimate Partner Violence:	Suspension from the University for a period of not less than one (1) year and permanent eviction or restriction from University Housing, and permanent restriction from campus. After the suspension is completed, the restriction from University Housing and campus shall continue, except for the purpose of attending classes. Other sanctions deemed appropriate by the hearing body may also be imposed.

- e. Appeal of sanctions: Either party may appeal the sanctions imposed by the ECC for violation of the Non-Discrimination and Harassment Policy. Cases involving sanctions of suspension or expulsion (including appeals based on the claim that such sanctions should have been imposed and were not) may be appealed by the complainant only in cases of Sexual Misconduct or Harassment.

Sanctions may only be appealed on the following grounds:

- Procedural error that, if not corrected, would cause a significant difference in the sanction;
- Inadequate justification for sanction inconsistent with the recommended sanctions for violations of the Non-Discrimination and Harassment Policy, as outlined in section D(i)(d); or
- New evidence not available during the investigation or hearing.

The appeal must be submitted, in writing, to the Chief Ethics and Compliance Officer or designee within 5 business days of the hearing. The Chief Ethics and Compliance Officer or designee will review the appeal and determine if one of the three ground(s) for appeal have been met. If one or more of the grounds for appeal exist(s), the appeal will be forwarded to the Equity Complaint Appeals Council (appeals involving sanctions other than suspension or expulsion) or the Board of Regents (appeals involving sanctions of suspension or expulsion), which will review the appeal based only on the ground identified by the Chief Ethics and Compliance Officer or designee. The decision of the ECAC or the Board of Regents shall be final.

If no ground(s) for appeal exists, the appeal will be denied and the sanction will be final. In cases involving sanctions of suspension or expulsion or a claim by a complainant that those sanctions should have been applied, the Chief Ethics and Compliance Officer or designee will evaluate the appeal and offer an recommendation as to whether or not the ground(s) for appeal have been met. The Chief Ethics and Compliance Officer or designee will submit his/her recommendation as to whether or not there are valid grounds for appeal, along with the materials submitted by the complainant and/or respondent, to the Board of Regents.

- f. Principles Governing Appeals:
- Appeals are confined to a review of the written record on appeal, including but not limited to evidence presented at the hearing and documentation pertinent to the grounds for appeal. The ECAC or Board of Regents shall not consider matters outside of the hearing record in making a determination.
 - Appeals granted based on new evidence will be remanded to the OEI investigator who will then review the factual findings to determine if the new information changes the factual finding. If the investigator determines that the factual finding has changed, the new factual finding will be returned to the ECC for sanctioning.
 - Sanctions imposed by the ECC are implemented immediately. In extraordinary circumstances, the Chief Ethics and Compliance Officer or designee may stay the implementation of sanctions pending the outcome of the appeal of the sanctions.

- All parties will be informed of the results of the appeal. The decision of the ECAC or the Board of Regents is final and may not be appealed.

ii. Student Withdrawal While Charges Are Pending

The University places a hold on the records of any student who has a complaint pending that alleges that student's violation of the policy. Should a student decide to voluntarily withdraw and/or not participate in the investigation and/or hearing, the process will nonetheless proceed in the student's absence to a reasonable resolution. The student will not be permitted to voluntarily withdraw from and/or register for classes and/or return to Eastern Kentucky University and/or receive a copy of his or her transcript unless the conditions of all sanctions have been satisfied.

iii. Failure to Complete Sanctions/Comply with Responsive Actions

All parties are expected to comply with conduct sanctions, responsive actions, or corrective actions within the time frame specified by the sanctioning body.

Failure to follow or complete conduct sanctions, responsive actions, corrective actions by the date specified – whether by refusal, neglect, or any other reason – may result in additional sanctions, responsive actions, corrective actions and/or suspension, expulsion, and/or termination from the University.

E. Resolution: Employees as Respondent

If the Executive Director of OEI and/or the Title IX Coordinator determine(s) that the preponderance of the evidence supports a finding of a violation of this policy, OEI will refer the matter to the Equity Complaint Council for recommendations with regard to discipline. All disciplinary recommendations will be made in accord with Regulation 8.4.3, Progressive Disciplinary Action. The appropriate Vice President/President, in consultation with Human Resources, will review the recommendation and implement discipline.

- i. .Disciplinary action:** Disciplinary or appropriate responsive actions will be determined by the Equity Complaint Council. Factors considered when determining a disciplinary/responsive action may include but are not limited to:

- The nature, severity of, and circumstances surrounding the violation;
- An individual's disciplinary history;
- Previous allegations involving similar conduct;
- Completion of required training related to the Non-Discrimination and Harassment policy;
- The need for disciplinary/responsive actions to bring an end to the Discrimination, Harassment, and/or Retaliation;
- The need for disciplinary/responsive actions to prevent the future recurrence of Discrimination, Harassment, and/or Retaliation; and
- The need to remedy the effects of the Discrimination, Harassment, and/or Retaliation on the victim and the community.

Appropriate responsive actions for an employee who has engaged in a violation of the Non-Discrimination and Harassment Policy include but are not limited to a written warning, required counseling, demotion, suspension with pay, suspension without pay, and termination.

ii. Hearing and Disciplinary Procedures

- a. General pre-hearing procedures:** After the Title IX Coordinator or OEI has made a finding of facts, investigators will contact and meet with the complainant and respondent separately to discuss the sanctioning process and to schedule a hearing.

At the meeting, OEI's investigative report and other documentation will be presented to the parties. Both parties will be informed of all the statements and evidence provided as well as the names of those providing the evidence to be used at the hearing.

- b. Both parties will receive the "Hearing Format Request" form.

The "Hearing Format Request" form provides the complainant and respondent with the available options for participating in the hearing.

- c. General Hearing Procedures before the ECC:

- The OEI/Title IX investigator will be called as the first witness and will testify as to the findings of the investigation.
- Both the complainant and the respondent may choose to participate in a manner that does not require their presence in the same room as the other party(ies).
- Both the complainant and the respondent are entitled to have one silent advisor present, for Sexual Misconduct cases only. This silent advisor may be an attorney. During the hearing, the silent advisor may confer only with the party she/he is advising and is not permitted to speak to the hearing body or to any other hearing participant before, during, or after the hearing.
- Both the complainant and the respondent have the right to testify on their own behalf. Neither the complainant nor the respondent is required to testify or be present at the hearing.
- Both the complainant and the respondent may hear and question adverse witnesses. Either the complainant or the respondent may choose to direct their questions through the chair.
- Both the complainant and the respondent may rebut unfavorable inferences.
- Both the complainant and the respondent may provide an impact statement.
- Both the complainant and the respondent shall receive concurrent notification of the sanction imposed by the ECC.
- Records shall be maintained by OEI in accord with the State University Model Retention Policy.

- d. Sanctions: Factors considered when determining a sanction may include but are not limited to:

- The nature, severity of, and circumstances surrounding the violation;
- An individual's disciplinary history;
- Previous allegations involving similar conduct;
- Completion of required training related to this policy;
- The need for sanctions to bring an end to the Discrimination, Harassment, and/or Retaliation;
- The need for sanctions/responsive actions to prevent the future recurrence of Discrimination, Harassment, and/or Retaliation; and
- The need to remedy the effects of the Discrimination, Harassment, and/or Retaliation on the victim and the community.

- e. Appeal of disciplinary actions for staff respondent, non-tenured faculty respondent, and tenured faculty respondent receiving disciplinary action other than termination: Either party may appeal the sanctions imposed for violation of the Non-Discrimination and Harassment Policy.

Disciplinary action may only be appealed on the following grounds:

- Procedural error that, if not corrected, would cause a significant difference in the sanction;
- Disciplinary action inconsistent with the prescribed sanctions for violations of the Progressive Disciplinary Policy (Policy 8.3.4R); or
- New evidence not available during the investigation or hearing.

The appeal must be submitted, in writing, to the Chief Ethics and Compliance Officer or designee within five (5) business days of the hearing. The Chief Ethics and Compliance Officer or designee will review the appeal and determine if one of the three ground(s) for appeal have been met. If one or more of the grounds for appeal exist(s), the appeal will be forwarded to the Equity Complaint Appeals Council, which will review the appeal based only on the ground(s) identified by the Chief Ethics and Compliance Officer or designee.

If no ground for appeal exists, the appeal will be denied and the sanction will be final.

- f. Principles Governing Appeals of Disciplinary Action for Staff Respondent, Non-Tenured Faculty Respondent, and Tenured Faculty Respondent Receiving Sanction other than Termination:

- The Equity Complaint Appeals Council will hear the appeal within five (5) business days of receiving the appeal from the Chief Ethics and Compliance Officer or designee.
- Appeals are confined to a review of the written record on appeal, including but not limited to evidence presented at the hearing and documentation pertinent to the grounds for appeal. The Equity Complaint Appeals Council shall not consider matters outside of the hearing record in making a determination.
- Appeals granted based on new evidence will be remanded to the OEI investigator who will then review the factual findings to determine if the new information changes the factual finding. If the investigator determines that the factual finding has changed, the new factual finding will be sent to the ECC for discipline.
- Discipline imposed by the hearing panel is implemented immediately. In extraordinary circumstances, the Chief Ethics and Compliance Officer may stay the implementation of sanctions pending the outcome of the appeal of the discipline.

g. Appeal of disciplinary action, for tenured faculty respondent subject to, termination only:

The tenured faculty member has a right to appeal the discipline of termination to the Board of Regents, pursuant to KRS 164.360. Complainants may appeal based on the claim that termination should have been the discipline imposed only in cases of Sexual Misconduct or Sexual Harassment.

h. Disciplinary action may be appealed only on the following grounds:

- Procedural error that, if not corrected, would cause a significant difference in the sanction;
- Disciplinary action inconsistent with the Regulation 8.4.3, Progressive Disciplinary Action; or
- New evidence not available during the investigation or hearing.

The appeal must be submitted, in writing, to the Chief Ethics and Compliance Officer or designee within five (5) business days of the hearing. The Chief Ethics and Compliance Officer or designee will review the appeal offer a recommendation as to whether or not the grounds for appeal have been met. The Chief Ethics and Compliance Officer or designee will submit his/her recommendation as to whether or not there are valid grounds for appeal, along with the written materials submitted by the complainant and/or respondent, to the Board of Regents. All documents to be used in the hearing before the Board of Regents must fully disclosed to the Chief Ethics and Compliance Office no less than five (5) days in advance of the hearing.

i. Principles Governing Appeals Involving Termination for Tenured Faculty: The following principles apply:

- The Board of Regents will hear the discipline appeal as soon as is practicable, but no later than the next regularly scheduled Board meeting. The decision of the Board of Regents is final and may not be appealed.
- Appeals based on new evidence will be remanded to the OEI investigator who will then review the factual findings to determine if the new information changes the factual finding. If the investigator determines that the factual finding has changed, the new factual finding will be sent to the appropriate hearing panel for sanctioning.
- A faculty member shall not be removed until after ten (10) days notice in writing, stating the nature of the charges preferred, and after an opportunity has been given him/her to make defense before the Board of Regents by counsel or otherwise and to introduce testimony which shall be heard and determined by the Board of Regents (KRS 164.360). In cases involving Sexual Misconduct or Sexual Harassment only, the complainant shall have the same rights as the tenured faculty respondent.
- All parties will be informed of whether the disciplinary action appeal is accepted and the results of the disciplinary action appeal decision.

ii. **Employee Resignation**: Should an employee resign while an investigation is pending, the records of the Executive Director of OEI/Title IX Coordinator will reflect that status. The University's response to any future inquiries regarding employment references for that individual will also reflect that the employee resigned while an investigation was pending. The Executive Director of OEI/Title IX Coordinator will act promptly and effectively to remedy the effects of the prohibited conduct upon the victim and the community.

- iii. **Failure to Complete Disciplinary Action/Comply with Responsive Actions:** Failure to follow through on disciplinary, responsive actions, and/or corrective actions by the date specified – whether by refusal, neglect, or any other reason – will result in additional disciplinary action up to and including termination from the University.

- F. **Records:** Records will be retained in accordance with the State University Model Records Retention Schedule.

VI. **Statement of the Rights of a Party Bringing a Complaint**

A party bringing a complaint pursuant to this policy has the following rights:

- To be treated with respect by Eastern Kentucky University officials;
- To take advantage of campus support resources;
- To experience a safe living, educational, and work environment;
- In the case of Sexual Misconduct or Sexual Harassment allegations, to have a silent advisor during hearings before the ECC, ECAC, or Board of Regents;
- To refuse to have an allegation resolved through conflict resolution procedures;
- To receive amnesty for certain student misconduct, such as alcohol or drug violations, that occurred ancillary to the incident;
- To be free from retaliation for reporting violations of this policy or cooperating with an investigation;
- To have complaints heard in accord with these procedures;
- To participate in any process regardless of whether the alleged victim serves as the complainant or the University stands as the complainant;
- To be informed in writing of the outcome/resolution of the complaint, sanctions where permissible, and the rationale for the outcome where permissible;
- To refer a complaint to law enforcement and receive assistance doing so; and
- To have minimal interaction or contact with the responding party.

VII. **Statement of the Rights of the Responding Party**

A party against whom a complaint is filed has the following rights:

- To be treated with respect by Eastern Kentucky University officials;
- To take advantage of campus support resources;
- To experience a safe living, educational, and work environment;
- In the case of Sexual Misconduct or Sexual Harassment allegations, to have a silent advisor during hearings before the ECC, ECAC, or Board of Regents;
- To refuse to have an allegation resolved through conflict resolution procedures;
- To receive amnesty for certain student misconduct, such as alcohol or drug violations, that occurred ancillary to the incident;
- To be free from retaliation for reporting violations of this policy or cooperating with an investigation;
- To have complaints heard in accord with these procedures;
- To participate in any process regardless of whether the alleged victim serves as the complainant or the University stands as the complainant;
- To be informed in writing of the outcome/resolution of the complaint, sanctions where permissible, and the rationale for the outcome where permissible;
- To refer a complaint to law enforcement and receive assistance doing so; and
- To have minimal interaction or contact with the complaining party.

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.

**Equity Complaint
Appeals Council
(ECAC)**

The Equity Complaint Appeals Council hears appeals of disciplinary action involving student respondents seeking an appeal unrelated to a sanction of suspension or expulsion, staff, and non-tenured faculty respondents. The Council also hears appeals of disciplinary action involving tenured faculty respondents that do not involve termination. The members shall be the Senior Vice-President for Academic Affairs and Provost, the Vice-President for Finance and Administration, and the Dean of Students.

**Equity Complaint
Council (ECC)**

The Equity Complaint Council is the body that determines sanctions/discipline for violations of this policy. The ECC is a University Standing Committee, appointed by the President based upon the joint recommendation of the Executive Director of Equity and Inclusion and the Title IX Coordinator. It consists of a pool of fourteen (14) members, who shall include six tenured faculty members, six staff members, and two student members. The Chair shall be a tenured faculty member, appointed by the President based upon the joint recommendation of the Executive Director of OEI and the Title IX Coordinator. Each hearing panel shall consist of five (5) employees. In cases involving a staff respondent, the panel shall consist of two (2) faculty members and three (3) staff members, to be selected from the pool at random. In cases involving a faculty member respondent, the panel shall consist of three (3) faculty members and two staff members, to be selected from the pool at random. In cases involving a student respondent, the panel shall consist of three (3) faculty members, three (3) staff members, and one student member. The student member shall not participate in sanctioning processes involving employees. At least three members (for employee cases) and four (for student cases) must be present to constitute a quorum. Decisions shall be by majority vote of the members of the Council.

Conflicts of Interest

In addition to compliance with the University's Code of Ethics policy, an ECC Panel member should disqualify himself or herself in a proceeding in which the Hearing Panel member's impartiality might reasonably be questioned, including but not limited to instances where:

- The Hearing Panel member has a personal bias or prejudice concerning a participant in the process or has personal knowledge of disputed facts concerning the proceeding;
- The Hearing Panel member was directly involved in the matter in controversy, or a subordinate whom the Hearing Panel member previously supervised is involved in the matter, or the Hearing Panel Member was a witness to the matter;

- The Hearing Panel member or a person in his/her family is related to a participant in the process; or
- The Hearing Panel member is in the same Department or Work Unit as a participant in the process.

Failure to disqualify himself or herself or notify the Office of Equity and Inclusion/Title IX Coordinator of potential conflicts of interest is considered a violation of this regulation

Restricted Communications

- Hearing Panel members shall not initiate, permit, or consider communications made to the Hearing Panel outside the Grievance proceedings concerning a pending or impending Grievance, except as follows:
 - Communications necessary to perform their responsibilities and duties
 - Communication for scheduling, administrative, or emergency purposes, which does not address substantive matters;

If a Hearing Panel member receives an unauthorized communication bearing upon the substance of a complaint, the member shall promptly notify the complainant, respondent, University representative, and the Office of Equity and Inclusion/Title IX Coordinator of the substance of the communication and provide the parties with an opportunity to respond.

A Hearing Panel member shall not investigate facts in a complaint, and shall consider only the evidence presented and any facts that may be pertinent to the sanctioning/discipline determination.

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	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. 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.
Silent Advisor	In cases involving allegations of sexual misconduct, a party may choose to have another individual accompany him or her to meetings with the investigator(s), or to a hearing. The advisor's role in any meeting or hearing is limited to quietly conferring with the party through written correspondence or whisper, and the advisor may not address any other participant or the hearing panel. An attorney may serve as a silent advisor.
Sexual Exploitation	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.

Examples of Sexual Exploitation include, but are not limited to:

- 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

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

- 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 Veteran

All faculty, staff, students, and Board of Regents members as well as anyone doing business for or with the University.
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 regulation.

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
 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
 Title IX, of the Education Amendments of 1972
 The Family Medical Leave Act of 1993
 Violence Against Women Act Reauthorization of 2013
 Any and all regulations pertaining to the above-referenced acts found in the Code of Federal Regulations
 and/or the Kentucky Administrative Regulations.

Regulation Review and Approval

Regulation Revision

<u>Date</u>	<u>Entity</u>	<u>Action</u>
June 8, 2015	Vice Provost	Editorial Change
December 10, 2014	President	Adopted
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

Regulation Issued

<u>Date</u>	<u>Entity</u>	<u>Action</u>
September 5, 2014	President Michael T. Benson	Adopted Interim