



Eastern Kentucky University

Policy and Regulation Library

University Policy: 1.4.1POL

Responsible Office(s): Office of Equal
Opportunity & Title IX

Effective: August 6, 2024

Next Review Date: Fall 2029

University Policy: 1.4.1POL Discrimination and Harassment

Statement

It is the Policy of Eastern Kentucky University (“EKU” or the “University”) to maintain an environment for students, faculty, administrators, staff, and visitors that is free of all forms of discrimination and harassment, including sexual misconduct. The University has published and enacted Policy 1.4.1, Discrimination and Harassment (hereafter referred to as the “Policy”) to reflect and maintain its adherence to all federal and state civil rights laws prohibiting discrimination and harassment in public educational institutions and to reflect and maintain its values as an institution.

The University does not discriminate on the basis of race, color, religious belief, national origin, sex, sexual orientation, gender identity, gender expression, pregnancy, ethnicity, disability, medical condition, veteran status, genetic information, age, or any other characteristic protected by federal, state or local law in its programs and activities. This prohibition applies to all University programs or activities, including but not limited to admission and employment.

The University will not tolerate discrimination of any kind, including all forms of sexual or gender-based discrimination, harassment, and misconduct, such as Sexual Assault, dating and domestic violence, sexual exploitation, and stalking. This Policy further prohibits aiding or inciting another person(s) to violate this Policy. This Policy specifically prohibits retaliation, in any form, against a person who reports, complains about, or who otherwise participates in good faith in any matter related to this Policy and Procedures.

The University will promptly, and equitably, respond to Complaints under this Policy in a fair, thorough, impartial, and transparent manner that respects the due process rights of all participants, protects the safety and welfare of students, employees, and the community, and restores or preserves equal access to the University’s programs and activities. EKU is committed to taking prompt, appropriate, and equitable action to respond to prohibited conduct as defined by this Policy (“Prohibited Conduct”) and to take appropriate corrective action. The University is also committed to the ongoing assessment and improvement and

effective implementation of this Policy.

The Office of Equal Opportunity & Title IX is responsible for administering this Policy.

This Policy does not establish contractual rights, in whole or in part, between ECU and any individuals, including students and/or employees.

Inquiries

Reports of Discrimination, Harassment, and/or Retaliation should be promptly made to the Office of Equal Opportunity & Title IX. The following person has been designated to handle inquiries regarding this Policy:

John Dixon
Interim Title IX Coordinator
john.dixon@eku.edu
859 (622-8221)

Reports related to ADA/Section 504 compliance and/or matters related to ADA accommodations compliance should be directed to:

John Dixon
Executive Director of Human Resources & ADA Coordinator
john.dixon@eku.edu
(859) 622-8221

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 undertaken, to the extent permitted by law, to maintain confidentiality and privacy, as discussed below. Reports of Discrimination on the part of the Director of the Office of Equal Opportunity & Title IX and/or Title IX Coordinator should be reported to Office of the President at ECU.

External inquiries may be made to:

- Equal Employment Opportunity Commission (EEOC)
Louisville Area Office
600 Dr. Martin Luther King, Jr. Place
Suite 268
Louisville, KY 40202
Phone: 1-800-669-4000
Contact: <http://www.eeoc.gov>
- Office for Civil Rights (OCR)
Philadelphia Office

U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Phone: (215) 656-8541
Email: OCR.Philadelphia@ed.gov
Website: <http://www.ed.gov/ocr>

- Kentucky Commission on Human Rights
332 W. Broadway, 14th Floor
Louisville, KY 40202
Phone: (800) 292-5566
Email: kchr.mail@ky.gov
Website: <http://www.kchr.ky.gov>

One does not have to make an internal inquiry or Complaint in order to file a Complaint with any of the above-named external civil rights agencies.

Entities Affected and Scope

This Policy applies to all Reports of Prohibited Conduct occurring on or after the effective date of this Policy. Where the date of the reported Prohibited Conduct precedes the effective date of this Policy, the definitions of misconduct in existence at the time of the report will be used. The Complaint Procedures under this Policy, however, will be used to investigate and resolve all reports for incidents occurring on or after the effective date of this Policy, regardless of when the incident(s) occurred.

I. Persons Covered

This Policy applies to University students, University employees, vendors, contractors, minors, guests, and other third parties. In addition, this Policy applies to employees and students at Model Laboratory School, though all student conduct at Model Laboratory School shall be processed through Model Laboratory School's student conduct policies.

I. Locations Covered

This Policy later describes the locations covered by this Policy's prohibition of Title IX Sexual Harassment. This Policy applies to all other acts of Prohibited Conduct committed by or against students, employees or third parties, via On-Campus Conduct, University Programs and Activities, Off-Campus Conduct, and/or Online Communications.

Background

This policy updates Policy 1.4.1.P, Policy on Discrimination and Harassment, in light of the requirements in the final Title IX regulations issued by the U.S. Department of Education on May 19, 2020, 85 Fed. Reg. 30026, as well as applicable case law. Violations of this Policy are subject to resolution using the process detailed herein and are not subject, unless otherwise noted below, 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.

Procedures

I. The Office of Equal Opportunity & Title IX and the Title IX Coordinator

The Office of Equal Opportunity & Title IX is responsible for addressing all allegations of discrimination, harassment and other conduct prohibited by this Policy. The Director of the Office of Equal Opportunity & Title IX is responsible for coordinating EKU's compliance with all federal, state, and local laws, as well as University Policies and Procedures, regarding discrimination and harassment other than discrimination and harassment on the basis of sex/gender. The Office of Equal Opportunity and Title IX Director serves as the Coordinator for the University's efforts to comply with laws other than Title IX.

As part of the Office of Equal Opportunity & Title IX, the Title IX Coordinator's duties include overseeing the University's efforts to comply with Title IX, as well as other federal, state and local laws, as well as University Policies and Procedures, regarding discrimination or harassment on the basis of sex/gender, including its disciplinary Procedures, education and prevention efforts, and training. The Title IX Coordinator is responsible for coordinating the University's response to all Complaints involving possible sex discrimination as well as monitoring outcomes, assessing the campus climate, and addressing any patterns of systemic problems that arise during the review of such Complaints. The Title IX Coordinator is also responsible for coordinating the effective implementation of supportive measures, and implementing remedies arising from the Procedures in this Policy.

For purposes of interpreting authority for this Policy, the Title IX Coordinator is responsible for interpretation of issues of discrimination or harassment on the basis of sex/gender. The Director of the Office of Equal Opportunity & Title IX is responsible for interpretation of all other issues within this Policy.

II. Prohibited Conduct

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 (race, color, religious belief, national origin, sex, sexual orientation, gender identity, gender expression, pregnancy, ethnicity, disability, medical condition, veteran status, genetic information, age, or any other characteristic protected by federal, state, or local law in its programs and activities). The University also prohibits retaliation.

The following acts are prohibited as Prohibited Conduct under this Policy and will be addressed by the University according to this Policy. Deliberately false and/or malicious accusations of harassment, discrimination, or retaliation are serious offenses and will be subject to appropriate disciplinary action.

- Age Discrimination
- Dating Violence
- Disability Discrimination
- Discrimination
- Domestic Violence
- National Origin/Ethnicity Discrimination
- Non-Consensual Sexual Contact
- Pregnancy Discrimination
- Race/Color Discrimination
- Relationship Violence
- Religious Discrimination
- Remedies
- Retaliation
- Sex Discrimination
- Sexual Assault
- Sexual Exploitation
- Sexual Harassment
- Sexual Misconduct
- Sexual Violence
- Stalking
- Veteran Discrimination

III. Supportive Measures

Upon receipt of a Report or Complaint under this Policy, the University will offer supportive measures, as appropriate and as reasonably available to the Complainant and/or to the Respondent. Supportive measures are non-disciplinary, non-punitive, individualized services that must be offered without fee or charge to the Complainant or the Respondent before or after the filing of a Complaint or where no Complaint has been filed. Such measures are designed to restore or preserve equal access to the University's programs and/ or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter discrimination or harassment.

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Upon receipt of a Report or Complaint under this Policy, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures with or without the filing of a Complaint, and explain to the Complainant the process for filing a Complaint. The Title IX Coordinator will contact the Respondent concerning supportive measures no later than issuance of notice that an investigation will be conducted.

Supportive measures may be imposed regardless of whether disciplinary action is sought by a potential Complainant or the University. A potential Complainant or Respondent may request a supportive measure, or the University may choose to impose supportive measures at its discretion to restore or preserve equal access to the University's programs and/or activities, ensure the safety of all parties, the broader University community, and/or the integrity of the process. The University will maintain the confidentiality of any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The University will promptly address any violation of the protective measures. The University will take immediate and responsive action to enforce a previously implemented restriction if such restriction is violated.

Emergency Removal and Administrative Leave: On an emergency basis, ECU may place a student on interim suspension, impose administrative leave for an employee, or otherwise remove a student or employee Respondent from or deny access to campus facilities, and/or all or part of the University's programs or activities during the pendency of the University's Procedures under this Policy. Prior to such removal, the University must undertake an individualized safety and risk analysis to determine whether there is an immediate threat to the physical health or safety of any student, employee, or other individual arising from the allegations of conduct prohibited by this Policy that would justify a Respondent's removal.

The University will provide the Respondent with written notice of an opportunity to appeal the removal decision immediately following the removal.¹ The written appeal request should state the reasons why the Respondent believes the removal should be overturned. The appeal request must be received by the Director of the Office of Equal Opportunity & Title IX within five (5) Business Days of the notification of the issuance of a temporary suspension. The Director of the Office of Equal Opportunity & Title IX will review the appeal to determine whether the decision was supported. The Director of the Office of Equal Opportunity & Title IX's appeal determination shall be sent to the Respondent within five (5) Business Days of receipt of the initial appeal request. The appeal determination by the Director of the Office of Equal Opportunity & Title IX is final.

During a temporary suspension, a student Respondent may be denied access to the

¹ This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

University's campus, facilities, or events. As determined by the Office of Equal Opportunity & Title IX, this restriction includes classes, access to campus housing or dining facilities, and/or all other University activities or privileges for which the student might otherwise be eligible. Similarly, alternative coursework options may be pursued to ensure as minimal an impact as possible on the Respondent and Complainant. A temporary suspension of a student Respondent may be enforced until the final disposition of the allegation has been made by the appropriate University official or hearing entity.

In the event that a Respondent employee is accused of a violation, which also constitutes grounds for immediate dismissal as defined pursuant to other employee policies, processes, and procedures, the Director of the Office of Equal Opportunity & Title IX may recommend that Human Resources place the employee on unpaid leave until such time as the matter is resolved. In the event that a Respondent employee is accused of a violation which does not constitute grounds for immediate dismissal under other employee policies, processes, and procedures, but the continued presence of the employee is disruptive to the work environment, the Director of the Office of Equal Opportunity & Title IX may recommend to Human Resources that the employee be placed on paid leave pending resolution of the matter. During temporary paid or unpaid leave, an employee may be denied access to the University's campus, facilities, or events. At the discretion of the Director of the Office of Equal Opportunity & Title IX, alternative work options may be pursued to ensure as minimal an impact as possible on the Respondent employee and Complainant or potential Complainant.

IV. Reporting

Any person may report a violation or alleged violation of this Policy (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute prohibited conduct), in person, by mail, by telephone, or by electronic mail or online portal, using the contact information listed for the Office of Equal Opportunity & Title IX and/or Title IX Coordinator, or by any other means that results in the Office of Equal Opportunity & Title IX and/or Title IX Coordinator receiving the person's verbal or written report. Such a Report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Office of Equal Opportunity & Title IX and/or Title IX Coordinator.

Where the University receives a Report or Complaint or otherwise has notice of a possible violation of this Policy, the University will take steps to understand what occurred and respond appropriately. With or without a Complaint, the University will provide supportive measures to the Complainant and the Respondent as appropriate.

Reports (including but not limited to Complaints) of violations of this Policy, including discrimination, harassment, and/or retaliation, should be promptly made to the Office of Equal Opportunity & Title IX, the Title IX Coordinator and/or any Mandatory Reporter. Any member of the University community may contact law enforcement, but no potential Complainant is required to do so.

Any individual may make an anonymous Report. Depending on the extent of information available about the incident or the individuals involved, however, the University's ability to respond to an anonymous Report may be limited. The Director of the Office of Equal Opportunity & Title IX and/or the Title IX Coordinator will review the anonymous Report and determine appropriate steps.

A. Reporting to Law Enforcement

The University strongly encourages all individuals to report any conduct that may be considered criminal to local law enforcement, in addition to reporting to the University. Reports to the Office of Equal Opportunity & Title IX and criminal reports may be made simultaneously, however, the processes are separate (i.e., the Office of Equal Opportunity & Title IX is not required to relay reports it receives to law enforcement)

B. Reporting to the University

Individuals are encouraged to contact the Office of Equal Opportunity & Title IX and/or the Title IX Coordinator, either directly or through the Office of Equal Opportunity & Title IX's website, to make Reports of possible violations of this Policy. Information from these Reports will be shared as necessary with Investigators, witnesses, and the Respondent. Subject to the University's obligation to redress violations, every effort will be made to maintain the privacy and confidentiality of those initiating a Report.

C. Reporting by University Employees

Any University employee may report alleged violations of this Policy. However, University employees designated as Mandatory Reporters who receive Actual Notice of allegations of violations of this Policy involving a student, or who know, or in the exercise of reasonable care should have known, of allegations of violations of this Policy involving an employee, are obligated to report those allegations to the Office of Equal Opportunity & Title IX as soon as practicable after becoming aware of the allegations. Failure by a Mandatory Reporter to report allegations of misconduct as soon as practicable may result in disciplinary action up to and including termination. Some employees, such as University-employed counselors, are permitted to maintain the confidentiality of reports.²

V. Investigation and Resolution Process

The following sets forth the Procedures for the University's response to a Complaint or Report of an alleged violation or violations of this Policy. The University affirms its commitment to the fair, equitable, and impartial resolution of all Reports and/or Complaints made under this Policy.

In this process, the University will treat Complainants and Respondents equitably by

² Information received as part of an Institutional Review Board ("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.

providing remedies to a Complainant where a determination of responsibility has been made against the Respondent, and by following the investigation and resolution process described in this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures, as defined in this Policy, against a Respondent. When the University has actual knowledge of Title IX Sexual Harassment, as defined in this Policy, in an education program or activity of the recipient against a person in the United States, it will respond promptly in a manner that is not deliberately indifferent, including by following the requirements of the procedures described in this Policy. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

The University recognizes, and will advise the parties, that there is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the investigation and resolution process.

The University will use the Preponderance of Evidence Standard to determine responsibility for any alleged violation of this Policy.

In all investigations and determinations of responsibility, the University will conduct an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

The University will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

A. Filing a Complaint

A Complaint may be filed with the Office of Equal Opportunity & Title IX, the Title IX Coordinator or any person with the authority to take corrective action on behalf of the University (as defined above). The Complaint may be filed in person, by mail, or by electronic mail or through the Office of Equal Opportunity & Title IX online reporting portal, by using the contact information required to be listed for the Office of Equal Opportunity & Title IX and/or Title IX Coordinator provided in this Policy.

In some instances, a Complaint may be signed by the Office of Equal Opportunity & Title IX Director or Title IX Coordinator, which alleges a potential violation of this Policy and requests that the University investigate the allegation or allegations. The Complaint must state the specific allegations to be investigated by the Office of Equal Opportunity & Title IX as well as the scope of the Office of Equal Opportunity & Title IX's investigation. Where the Title IX Coordinator signs a Complaint, the Title IX Coordinator is not a Complainant and must comply with the requirements of these Procedures.

In all cases, the University will give consideration to the potential Complainant with respect to whether and/or how a Complaint is initiated and/or pursued.

B. Privacy and Confidentiality

The University will, to the extent permitted by law, keep confidential the identity of any individual who has made a Report or filed a Complaint under this Policy, 2) any Complainant, 3) any individual who has been reported to be the perpetrator of a Policy violation, 4) any Respondent, 5) and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, to carry out the purposes of any arising investigation, hearing, or judicial proceeding. The University does not restrict the ability of either party to a Complaint to discuss an investigation with other individuals.

The potential Complainant has the right to request that the Office of Equal Opportunity & Title IX and/or the Title IX Coordinator not share their name (or other identifiable information) with the Respondent, or that the Office of Equal Opportunity & Title IX or the Title IX Coordinator take no action in response to a Report. The Office of Equal Opportunity & Title IX and/or the Title IX Coordinator, as appropriate, have the responsibility for evaluating confidentiality requests. If the potential Complainant makes such a request, the Office of Equal Opportunity & Title IX will balance the request with its dual obligation to provide a safe and non-discriminatory environment for all University community members, and to remain true to principles of due process and fundamental fairness that require the University to provide the Respondent with notice of the allegations and an opportunity to respond before action is taken against the Respondent. The Office of Equal Opportunity & Title IX will make this determination consistent with the following considerations: 1) the seriousness of the conduct; 2) the respective ages and roles of the Complainant and the Respondent; 3) whether there have been other Complaints against the Respondent; and 4) the right of the Respondent to receive notice and relevant information before disciplinary action is sought.

C. Conflicts of Interest or Bias

Both parties have a right to an investigation and resolution process free of conflicts of interest or bias by any University employee or official involved in the process, including the Title IX Coordinator, Investigator, member of the ECC, member of the ECAC, member of the Board of Regents, or any person designated by the University to facilitate an informal resolution process. The University employee or official involved in the process must not have and should disqualify themselves in a matter or proceeding in which the member's impartiality might reasonably be questioned, including but not limited to instances where:

1. The member has a personal bias or conflict of interest concerning a participant in the process, or has personal knowledge of disputed facts concerning the matter;
2. The member has a personal bias or prejudice against Complainants or Respondents generally;
3. The member was directly involved in the matter in controversy, or a

- subordinate whom the member previously supervised is involved in the matter, or the member was a witness to the matter;
4. The member or a person in their family is related to a participant in the process; or
 5. The member is in the same Department or Work Unit as a participant in the process.

Failure of a University employee or official to disqualify themselves or notify the Office of Equal Opportunity & Title IX of potential conflicts of interest is considered a violation of this Policy.

A Complainant or potential Complainant and the Respondent have the opportunity to object to the participation of any University official or employee involved in the process (including the Title IX Coordinator, Investigator, hearing officer, or individual(s) designated to facilitate the University's Informal Resolution process on the grounds of bias or conflict of interest. The investigation or proceeding will be temporarily suspended and the Director of the Office of Equal Opportunity & Title IX or another appropriate official who is not the subject of the objection will evaluate whether the objection is substantiated. The parties will be notified in writing of the findings within five (5) Business Days. If the University employee or official is found to have a bias or conflict of interest against either party, the University employee or official will be removed from the matter and (when necessary) replaced. The investigation or proceeding will resume immediately upon a finding of no bias or conflicts, or upon the replacement of the University employee or official, whichever is first.

D. Sexual Predisposition and Prior Sexual Behavior of the Parties

The Complainant's or potential Complainant's sexual predisposition and prior sexual behavior are generally not relevant and will not be considered as evidence. However, either party's prior sexual behavior may be offered as evidence under the following limited circumstances:

- To provide that someone other than the Respondent committed the conduct alleged by the Complainant; or
- To prove consent by offering specific incidents of the Complainant's prior sexual behavior with respect to the Respondent. As noted, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent.

E. Timeframe for Investigations

The University strives to complete all investigations, hearings, and appeals within reasonably prompt timeframes. The University's goals are to complete investigations and hearings within 60-90 Business Days, including completion of the appeals process within 30 Business Days after receipt of the appeal and, if applicable, completion of the informal resolution process within 30 Business Days. These processes may be temporarily

delayed or extended for a limited time frame for good cause. Good cause may include considerations such as the absence of a party, a party's advisor or witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities. The Office of Equal Opportunity & Title IX will provide written notice of any delays and/or extensions to the parties and describe the reason(s) for the delays and/or extension.

F. Initiation of a Complaint

1. Intake Meeting

Upon receipt of a Report or Complaint, The Office of Equal Opportunity & Title IX and/or the Title IX Coordinator will promptly contact the Complainant for an intake meeting to discuss the availability of supportive measures under this Policy, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a Complaint, and explain to the Complainant the process for filing a Complaint. If the potential Complainant is unknown, the Office of Equal Opportunity & Title IX and/or the Title IX Coordinator will make reasonable efforts to identify the likely potential Complainant and reach out to that person. During the intake meeting, the Office of Equal Opportunity & Title IX and/or the Title IX Coordinator will seek to get a basic understanding of the reported conduct so that it can appropriately assess key facts to determine how to proceed. Follow-up intake meetings will be had as necessary.

2. Initial Determination

The Office of Equal Opportunity & Title IX and/or the Title IX Coordinator will make an initial determination as to whether the reported conduct, if true, could constitute a violation of this Policy. This determination will be made based on information in the Report or Complaint as well as information provided by the potential Complainant during the intake meeting(s).

If the reported conduct alleges a violation of this Policy, if proved, the University will proceed to an investigation. For Complaints that include an allegation of sexual harassment, the University will consider whether the alleged conduct, if proved, would meet the definitions of Non-Title IX Sexual Harassment and/or Title IX Sexual Harassment.

If the reported conduct does not appear to allege a violation of this Policy, the Office of Equal Opportunity & Title IX and/or the Title IX Coordinator will close the matter if no Complaint has been filed or dismiss the Complaint if a Complaint has been filed. For allegations of Title IX Sexual Harassment, ECU will dismiss the Complaint as a Title IX Sexual Harassment Complaint if the Complainant is no longer enrolled or employed by ECU and/or if the

alleged conduct did not occur in the University's education program or activity, or did not occur against a person in the United States. As appropriate, ECU may address the allegation(s) under another provision of this Policy.

The Office of Equal Opportunity & Title IX and/or the Title IX Coordinator will promptly provide written notice to the potential Complainant of its determination to close or dismiss a Complaint or any allegations therein, the reason(s) therefore, and the appeal process available for closures and dismissals.

The University may also dismiss the Complaint or any allegations therein, if at any time during the investigation, hearing or appeal:

- a. A Complainant notifies the Office of Equal Opportunity & Title IX and/or the Title IX Coordinator in writing that the Complainant would like to withdraw the Complaint or any allegations therein;
- b. For allegations of Title IX Sexual Harassment, the Respondent is no longer enrolled or employed by ECU; or
- c. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Complaint or allegations therein.

In all other instances, if the Office of Equal Opportunity & Title IX and/or the Title IX Coordinator determines that the allegations, if true, could constitute a violation of this Policy, and that an investigation must commence, the matter will proceed to an investigation. Where the Complainant chooses to participate in the investigation, the Office of Equal Opportunity & Title IX will have the person confirm, in writing, their specific allegations as well as their understanding of the scope of the investigation (the "Complaint").

The University may consolidate Complaints as to allegations of violations of this Policy against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations arise out of the same facts or circumstances.

3. Notice of the Investigation to the Parties

The Office of Equal Opportunity & Title IX will notify the Complainant (or potential Complainant) and Respondent, in writing and simultaneously, of its decision to proceed to investigation of any alleged violation of this Policy. This notice will include a copy of the Complaint. Where a Complainant chooses to not participate in an investigation that is moving forward

regardless, the Office of Equal Opportunity & Title IX will prepare a writing of the specific allegations as well as the scope of the investigation prior to the start of the investigation. The written notification to the Complainant and to the Respondent will include the following, where known at that time:

- a. A description of this Policy and the Procedures under this Policy, including any available Informal Resolution processes.
- b. A description of the allegations potentially constituting a violation of this Policy, including sufficient details known at the time. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting a violation of this Policy, and the date and location of the alleged incident, if known.
- c. Notice that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Procedures in this Policy.
- d. The date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- e. Notice to the parties that they may have an advisor of their choice, who may be, but is not required to be an attorney.
- f. Notice to the parties of the University's student or employee code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the Procedures under this Policy.

For allegations of Title IX Sexual Harassment, the written notice must also include notice to the parties that they may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in a Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.

The University will provide the Respondent with sufficient time to review the notice and prepare a response before any initial interview.

In the course of the investigation, the University will provide notice of any additional allegations to the parties if the University decides to investigate allegations about the Complainant or Respondent that are not otherwise provided in the initial written notice.

G. Informal Resolution

At any time prior to reaching a determination regarding responsibility, the University may offer and facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. Informal Resolution is a voluntary, structured interaction between or among the parties that is designed to reach an effective resolution to a Report or Complaint made under this Policy. The University recognizes that Informal Resolution options may, if implemented in concert with institutional values and legal obligations, be an appropriate means of addressing some forms of possible Prohibited Conduct reported under this Policy.

Informal Resolution is not appropriate for all forms of possible Prohibited Conduct under this Policy and the Office of Equal Opportunity & Title IX retains the discretion to determine which cases are appropriate for Informal Resolution. The Office of Equal Opportunity & Title IX will determine if Informal Resolution is appropriate based upon: 1) the willingness of the parties to participate in Informal Resolution; 2) the nature of the conduct at issue; and 3) the susceptibility of the conduct to Informal Resolution.

Participation in the Informal Resolution process is voluntary and the University will not require the parties to participate in an informal resolution process to resolve allegations of Prohibited Conduct under this Policy. Both a Complainant and a Respondent can request to end this type of resolution and pursue an investigation at any time.

The University must obtain the parties' voluntary, written consent to the informal resolution process. The University will provide the parties with written notice disclosing: 1) the allegations; 2) the requirements of the Informal Resolution process, including the circumstances under which it precludes the parties from resuming an investigation arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the formal resolution process; and 3) any consequences resulting from participating in the Informal Resolution process, including the records that will be maintained or could be shared.

For allegations of Title IX Sexual Harassment, Informal Resolution, even if voluntary, will not be used unless and until a Complaint is filed with the appropriate University official and will not be used to address allegations that an employee sexually harassed a student. In addition, the University does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Complaints of Title IX sexual harassment under this Policy.

Individuals may be accompanied by an Advisor at any meetings related to the Informal Resolution process. Information shared or obtained during Informal Resolution will be treated as confidential to the extent permitted by law and will not result in subsequent disciplinary actions by the University, unless additional action is deemed necessary to fulfill the University's legal obligations.

The Office of Equal Opportunity & Title IX will keep records of any resolution that is reached, and failure to abide by the resolution may result in appropriate responsive actions.

H. Investigation Process

All investigations will be prompt, adequate, thorough, reliable, and impartial, incorporating applicable investigation techniques, including, but not limited to, interviewing relevant parties and witnesses, obtaining available evidence, and identifying sources of expert information. The Complainant and Respondent have equal procedural rights throughout the investigation and resolution of a Complaint. The University provides periodic status updates, as appropriate, to the parties.

When investigating a formal Complaint and throughout the Procedures under this Policy, ECU will—

- Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on ECU and not on the parties provided that the University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so for the Procedures under this Policy (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the University must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3);
- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- Provide the parties with the same opportunities to have others present during the Procedures under this Policy, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or proceeding under this Policy; however, the advisor's role (except in cases alleging Title IX Sexual Harassment) is limited to quietly conferring with the party, and the advisor may not address any other participant or the hearing panel.

- Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

For allegations of Title IX Sexual Harassment, the University must also provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. In addition, prior to completion of the investigative report, the University must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format. The University must also make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

For all Complaints, University investigations may be delayed for a reasonable time when criminal charges based on the same conduct that initiated the investigative process are being investigated by law enforcement officials. The University will proceed under this Procedure regardless of the outcome of the law enforcement investigation or whether criminal charges are or are not filed. The University's process is separate and distinct from the criminal justice process.

I. Investigation Report

1. Preliminary Report

Once the investigation is complete, the Office of Equal Opportunity & Title IX or the Title IX Coordinator will prepare a Preliminary Report. The Preliminary Report is a written report that fairly summarizes relevant evidence gathered during the course of the investigation. The Preliminary Report will state specific factual findings and will include the Office of Equal Opportunity & Title IX's recommendation as to whether the evidence supports that Respondent has violated this Policy. The standard for determining each factual finding will be the Preponderance of the Evidence Standard.

The Preliminary Report will be provided in electronic format or in a hard copy to the parties and their advisors, if any, for review at least fifteen (15) business days prior to a hearing. The parties must respond to the Preliminary

Report within ten (10) Business Days of receipt. The parties may provide: 1) a written response to the information and findings in the Preliminary Report, including the provision of additional clarifying information; 2) identification of new witnesses; and/or 3) submission of new evidence. The Office of Equal Opportunity & Title IX will review any responses provided and consider whether the responses establish a basis for additional investigation and/or for altering any information or findings in the Preliminary Report.

2. Draft Final Report

The Office of Equal Opportunity & Title IX will issue a Draft Final Report that will include: the Preliminary Report; the parties' responses to the Preliminary Report (if applicable); The Office of Equal Opportunity & Title IX determinations regarding the parties' responses (if applicable); and The Office of Equal Opportunity & Title IX's preliminary finding(s) as to whether the evidence supports that Respondent has violated this Policy. The Draft Final Report will also, if applicable, describe any sanctions or discipline proposed for the Respondent or remedies for the Complainant. The Draft Final Report will be simultaneously provided to both parties. Factors relating to possible sanctions, discipline and remedies are described below.

The University will use the Formal Resolution Process in each of the following situations:

1. The alleged misconduct is Title IX sexual harassment as defined by this Policy;
2. The proposed sanctions include suspension or expulsion of a student Respondent or termination of an employee Respondent from the University's programs and/or activities;
3. Either party submits a written request to the Office of Equal Opportunity & Title IX or the Title IX Coordinator for the Formal Resolution Process to challenge the preliminary findings(s) of responsibility and/or the proposed sanctions, discipline and/or remedies. The written request for the Formal Resolution Process must be submitted within three (3) Calendar Days of the date on which the Draft Final Report was provided. In the event that either party submits a written request for the Formal Resolution Process, the Office of Equal Opportunity & Title IX may recommend Informal Resolution, if appropriate based on the criteria set forth elsewhere in this Policy.

If Formal Resolution is not required as provided above or if the parties both submit a written waiver of their rights to have the Formal Resolution Process, the Office of Equal Opportunity & Title IX will inform both parties in writing simultaneously that the Draft Final Report, including the preliminary

finding(s) and proposed sanctions, is final. This notice will be issued within ten (10) Business Days of the date on which the Draft Final Report was provided, and will also describe ECU's procedures and bases for the Complainant and the Respondent to appeal the Final Report.

J. Formal Resolution Process

1. Hearing Panel

Hearings for Title VII or Other Discrimination/Harassment Investigations

The Equity Complaint Council ("ECC") Hearing Panel is convened to make two separate decisions, both by majority vote. First, the ECC Hearing Panel will determine, by majority vote, whether the evidence and the witness testimony support a finding of "Responsible." Second, during the same hearing, the ECC Hearing Panel will determine, by majority vote, any applicable sanctions or discipline for violations of this Policy. The ECC Hearing Panel shall not re-investigate facts in a Complaint, and shall consider only the evidence presented and any facts that may be pertinent to the determination of responsibility and the sanctioning or discipline determination.

For Student Respondents, the ECC has been given the authority by the University's Board of Regents to impose a sanction for any violation by a student of this Policy, up to and including, suspension or expulsion. The ECC Hearing Panel shall consist of (1) faculty member, (1) staff member and (1) student member, as appropriate.

For Employee Respondents, all disciplinary recommendations will be made in accordance with Regulation 8.4.3, Progressive Disciplinary Action. The appropriate President/Vice President, in consultation with Human Resources, will review the recommendations and implement discipline. The ECC Hearing Panel shall consist of two (2) faculty members and (1) staff members or (2) staff members and (1) faculty member, as appropriate, to be selected from the pool at random.

Hearings for Title IX Investigations

For hearings stemming from allegations under Title IX, the hearing body shall consist of one person, the Title IX Hearing Officer. This person shall be an outside party contracted by the University to do the following: 1) conduct and act as the Title IX Hearing Officer during the course of the hearing, asking questions and determining the relevance of any and all questions posed by either party to any other party; 2) assess credibility off all parties and witnesses at the hearing; 3) at the end of the hearing, and in a reasonable timeframe, decide responsibility, if any, on the part of the Respondent for

any alleged Policy violation, and, where violations this Policy are determined to have occurred, consult appropriate administration to assign sanctions for the Respondent.

The Title IX Hearing Officer shall set forth, in writing, all factual findings related to the hearing, all decisions related to the hearing, and, where applicable, all sanctions. This information shall be provided to the parties as soon as the information is made available by the Title IX Coordinator or Office of Equal Opportunity & Title IX staff.

2. Restricted Communications

ECC Hearing Panel members shall not initiate, permit, or consider communications made to the Hearing Panel outside the proceedings concerning a pending or impending hearing, except as follows: 1) Communications necessary to perform their responsibilities and duties; and/or 2) 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 Equal Opportunity & Title IX and/or Title IX Coordinator of the substance of the communication and provide the parties an opportunity to respond.

3. Hearing and Sanctioning and Disciplinary Procedures

A. Pre-Hearing Procedures

When a matter is to be processed through the Formal Resolution Process, the Office of Equal Opportunity & Title IX or the Title IX Coordinator will notify both parties in writing of the date, time, and location of the ECC hearing at least five (5) Business Days prior to the hearing. The Office of Equal Opportunity & Title IX or the Title IX Coordinator will also contact and separately discuss with the Complainant and Respondent the hearing and sanctioning/disciplinary process.

The Complainant and Respondent shall submit to the Office of Equal Opportunity & Title IX or the Title IX Coordinator any information they wish to present at the hearing, the name of their Advisor, a list of questions, if desired, and a list of possible witnesses at least two (2) Business Days prior to the hearing.

A Respondent or Complainant may request to postpone the hearing for good cause. The Respondent or Complainant shall submit to the Office of Equal Opportunity & Title IX a written request for postponement, including the reason(s) for the request, no later than one (1) Business

Day prior to the scheduled hearing unless an unforeseen circumstance occurs. The Office of Equal Opportunity & Title IX will forward the request to the Title IX Coordinator, for Title VII or Other Discrimination/Harassment related hearings or the Hearing Officer, for Title IX Hearings, who may accept or deny the request, after considering the nature of the request and the incident at issue.

B. Hearing Procedures

i. All Hearings

All hearings will be held in accordance with the following procedures:

- a. The Office of Equal Opportunity & Title IX will be called as the first witness and will testify as to the preliminary findings of the investigation.
- b. Live hearings may be conducted with all parties physically present in the same geographic location or, at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Both the Complainant and the Respondent may choose to request that the live hearing occur with the parties located in separate rooms with technology enabling the participants simultaneously see and hear the party or the witness answering questions each as one another.
- c. Both the Complainant and the Respondent are entitled to have one Advisor or support person present, who may be an attorney. For Title IX Hearings, both parties are required to have an Advisor who will advise them during the Hearing and will ask questions of any/all other witnesses and Parties to the matter. The University will not limit a Complainant or Respondent's choice of an Advisor or the Advisor's presence at any meeting or proceeding under this Policy; however, as described in this Policy, except in cases alleging Title IX Sexual Harassment, the advisor's role is limited to quietly conferring with the party, and the advisor may not address any other participant or the hearing panel.
- d. Both the Complainant and the Respondent may rebut unfavorable inferences.
- e. Both the Complainant and the Respondent may provide an impact statement.
- f. A record shall be made of the hearing and maintained in the Office

of Equal Opportunity & Title IX in compliance with the State University Model Records Retention Schedule.

ii. ECC Hearings involving Non-Title IX Sexual Harassment

For ECC hearings regarding alleged violations of this Policy other than for Title IX Sexual Harassment, the following additional procedures apply:

- a. **Advisor's Role:** During the hearing, the Advisor or support person may confer only with the party they are advising and is not permitted to communicate to the hearing body or to any other hearing participant before, during, or after the hearing. An Advisor or support person may be dismissed if they attempt to directly participate in the proceedings or are otherwise disruptive, in the judgment of the majority of the ECC Hearing Panel.
- b. **Party's Participation:** Both the Complainant and the Respondent have the right to testify on their own behalf. However, neither the Complainant nor the Respondent is required to testify or be present at the hearing.
- c. **Questioning:** Both the Complainant and the Respondent may hear and question the other party and adverse witnesses. Questions from either the Complainant or the Respondent will be directed through the Hearing Panel.

iii. ECC Hearings involving Title IX Sexual Harassment

For ECC hearings regarding alleged violations of this Policy concerning Title IX Sexual Harassment, the following additional procedures will apply:

- a. **Advisor's Role:** If a party does not have an Advisor present at the live hearing, the University will provide without fee or charge to that party, a list of ECU employees who serve as Advisors on a volunteer basis, and who may be, but are not required to be, an attorney, from which the party must choose. The chosen Advisor will conduct cross-examination on behalf of that party.
- b. **Opportunity for Cross-Examination:**
 - Each party's advisor must be permitted to ask the other party and any witnesses all relevant questions and follow up questions, including those challenging credibility.

- Cross-examination must be conducted directly, orally, and in real time by the party's Advisor and never by a party personally, notwithstanding the discretion of the University to otherwise restrict the extent to which Advisors may participate in the proceedings.
 - Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Title IX Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
 - The ECC Hearing Panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing.
- c. Hearing Record: EKU will create an audio or audiovisual recording, or transcript, of the hearing and make it available to the parties, upon request to University Counsel, through an Open Records Request, for inspection and review.

C. Sanctions/Disciplinary Actions and Remedies

Factors considered when determining a sanction or other disciplinary action 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 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 possible sanctions that will be imposed upon individuals who are found to be responsible for specific violations of

this Policy. The sanctions listed below may be imposed singularly or in combination and second or subsequent offenses will receive more severe sanction. Possible sanctions include, but are not limited to:

- **Warning:** Notice, in writing, that continuation or repetition of this Policy violation may be cause for additional disciplinary action.
- **Censure:** A written reprimand for violating this Policy. This conduct status specifies a period of time during which the individual's good standing with the University may be in jeopardy. The student is officially warned that continuation or repetition of the prohibited conduct may be cause for additional conduct action including probation, suspension, or expulsion from the University. The employee is officially warned that continuation or repetition of the prohibited conduct may be cause for additional conduct action including probation, suspension, or expulsion from the University.
- **Disciplinary Probation:** Exclusion from participation in privileged activities for a specified period of time. For students, privileged activities may include, but are not limited to, elected or appointed offices, student research, athletics, some student employment, and study abroad. Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other University Policy violations may result in further disciplinary action.
- **Restitution:** Repayment to the University or to an affected party for damages (amount to be determined by the University) resulting from a violation of this Policy. To enforce this sanction against students, the University reserves the right to withhold its transcripts and degrees or to deny a student participation in graduation ceremonies and privileged events.
- **Removal from Campus Housing:** Students may be removed from University housing and/or barred from applying for campus housing due to disciplinary violations of this Policy.
- **Suspension:** Temporary exclusion from University premises, attending classes, and other privileges or activities for a specified period of time, as set forth in the suspension notice. Notice of this action will remain in the individual's conduct file and will be permanently recorded on a student's academic

transcript. Conditions for readmission may be specified in the suspension notice.

- **Expulsion:** For students, permanent termination of student status and exclusion from University premises, privileges, and activities. This action will be permanently recorded on the student's academic transcript. For employees, termination of employment, including permanent exclusion from University premises and other privileges or activities. Notice of this action will remain in the employee's conduct file.
- **Revocation of Admission and/or Degree:** For students, admission to, or a degree awarded by, the University may be revoked for fraud, misrepresentation in obtaining the degree or violation of University policies, the Student Code of Conduct or for other serious violations committed by a student prior to enrollment or graduation.
- **Withholding Degree:** For students, the University may withhold awarding a degree otherwise earned until the completion of the process set forth in this Policy and Procedures, including the completion of all sanctions imposed, if any.
- **Other:** Other sanctions may be imposed instead of, or in addition to, those specified here. Service, education or research projects may also be assigned.

For *Student Respondents*, sanctions imposed by the ECC Hearing Panel are implemented immediately upon receipt of ECC or Title IX Hearing Officer decisions. Sanctions of suspension and expulsion are permanently noted on a student's transcript.

For *Employee Respondents*, sanctions, discipline and remedies recommended by the ECC Panel or Title IX Hearing Officer will be forwarded to the appropriate Vice President/President and Human Resources immediately for review and implementation.

The ECC Hearing Panel may also decide to provide remedies to the Complainant. Remedies must be designed to restore or preserve equal access to the University's programs and activities. Such remedies may include the same individualized services

described in this Policy as “supportive measures”; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

D. Written Determination

Both the Complainant and the Respondent shall be simultaneously provided with a written determination, which will include:

- i. Identification of the allegations;
- ii. A description of the procedural steps taken from the receipt of the Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- iii. Findings of fact to support the determination;
- iv. Conclusions, using the Preponderance of Evidence Standard, regarding the application of the University’s Policy to the facts;
- v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University’s programs and activities will be provided by the University to the Complainant; and
- vi. EKU’s appeal procedures and the permissible bases for the Complainant and Respondent to appeal.

The determination regarding responsibility becomes final either on the date that University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

4. Appeals Procedures including Appeals for Tenured Faculty Respondent Subject to Termination Only)

The Respondent and the Complainant may appeal the University’s closure or dismissal of a Complaint or allegations therein, as well as the Title IX Hearing Officer or ECC Hearing Panel’s written determination of responsibility and/or sanctions or discipline. The University will implement the appeal procedures equally for both parties and will use the

Preponderance of the Evidence Standard for its determination.

All appeals must be submitted in writing to the Director of the Office of Equal Opportunity & Title IX within five (5) Business Days of the receipt of the written decision rendered by the Title IX Hearing Officer or ECC Hearing Panel. The Appeal will then be forwarded to and considered by the University's Equity Complaint Appeals Council ("ECAC") for appeals involving sanctions other than suspension or expulsion; or, as required by Kentucky law, the Board of Regents for appeals involving sanctions of suspension or expulsion, except that a tenured faculty member has a right to appeal the discipline of termination to the Board of Regents pursuant KRS164.360 (see below).

Either party may appeal the ECC or Title IX Hearing Officer Determination of Responsibility and/or the sanctions or discipline imposed by the ECC or Hearing Officer. However, pursuant to KRS 164.360, in instances in which the Respondent is a tenured faculty member, the Complainant may appeal sanctions or discipline based on the claim that termination should have been imposed only in cases of Sexual Misconduct or Sexual Harassment.

When an appeal is filed by one party, the University will notify the other party in writing that an appeal has been filed. An appeal must be based on one or more of the following grounds:

1. **Procedural Error:** A procedural error occurred that affected the outcome of the investigation, including the findings and/or sanctions or discipline. A description of the error and its impact on the outcome of the case must be included in the written appeal.
2. **New Evidence:** New evidence that was not reasonably available at the time that the determination of responsibility was made and that could affect the outcome of the case, including the findings and/or sanctions. Information that was known to the Complainant or Respondent during the investigation, but which they chose not to present, is not new evidence. A summary of this new evidence and its potential impact on the investigation findings and/or sanctions must be included in the written appeal.
3. **Conflict of Interest or Bias:** The Title IX Coordinator, Investigator(s), any member of the ECC Panel, or the Title IX Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
4. **Inadequate Justification:** There is inadequate justification for the sanctions or discipline.

The role of the ECAC or Board of Regents regarding appeals is limited. Appeals are not intended to be a full rehearing of the Complaint. The parties will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome of the investigation.

Appeals are confined to a review of the statements submitted by the parties and the investigative and hearing record for the grounds stated above, including but not limited to evidence presented at the hearing and documentation pertinent to the grounds for appeal. The ECAC and/or the Board of Regents shall not consider matters outside of the statements provide by the parties and the investigative and hearing record in making a determination.

ECAC members and/or the Board of Regents shall not initiate, permit, or consider communications made to them outside the proceedings concerning a pending or impending appeal, except as follows: 1) Communications necessary to perform their responsibilities and duties; and/or 2) Communication for scheduling, administrative, or emergency purposes, which does not address substantive matters. If an ECAC member or a Regent receives an unauthorized communication bearing upon the substance of a Complaint, the member or Regent shall promptly notify the Complainant, Respondent, University representative, and the Office of Equal Opportunity & Title IX of the substance of the communication and provide the parties with an opportunity to respond.

If the ECAC or Board of Regents determines that a submitted appeal does meet the standards for an appeal, the ECAC or Board of Regents will deny the appeal. If the ECAC or Board of Regents determines that a submitted appeal meets one of the appeal bases, the ECAC or Board of Regents will take appropriate action as indicated below.

1. **Procedural Error:** If it is determined that a procedural error occurred that affected the outcome of the investigation, including the findings and/or sanctions or discipline, the ECAC or Board of Regents will return the matter to the Office of Equal Opportunity & Title IX with instructions to correct the error, and to reconsider the findings as appropriate. In rare cases, where the procedural error cannot be corrected by the Office of Equal Opportunity & Title IX (as in cases of bias), the ECAC or Board of Regents may order a new investigation with a new investigator.
2. **New Evidence:** If the ECAC or Board of Regents determines that new evidence should be considered that could affect the outcome of the investigation, including the findings and/or sanctions or discipline, the matter will be returned to the Office of Equal Opportunity & Title

IX to reconsider the Complaint in light of the new information only, and to reconsider the original findings as appropriate. The Office of Equal Opportunity & Title IX will prepare an Addendum to the Final Report, and provide the Parties with an opportunity to respond to the Addendum within ten (10) Business Days. If the ECAC or the Board of Regents determines that new evidence should be considered that could impact the sanctions or discipline, the ECAC or the Board of Regents may issue a new sanction or discipline.

3. **Conflict of Interest or Bias:** If the ECAC or the Board of Regents determines that the Title IX Coordinator, Investigator(s), a member of the ECC Panel, or Title IX Hearing Officer had a conflict of interest or bias as described above that affected the outcome of the matter, the ECAC or the Board of Regents may order a new investigation and/or hearing with different University personnel.
4. **Inadequate Justification:** If the ECAC or the Board of Regents determines that there is inadequate justification for the sanctions or discipline, the ECAC or the Board of Regents may issue new sanctions or discipline.

The ECAC or Board of Regents will simultaneously notify both parties in writing of the outcome, including the result of the appeal and the rationale for the result. The decision of the ECAC or the Board of Regents shall be final.

Appeals for Tenured Faculty Respondent Subject to Termination Only

A Respondent who is a 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.

The following principles apply regarding the termination of tenured faculty members:

- 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 Office of Equal Opportunity & Title IX 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 to him or her to make a 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 notified, simultaneously, of whether the disciplinary action appeal is accepted and the results of the disciplinary action appeal decision.

5. Student Withdrawal or Employee Resignation While Charges Pending

The University places a hold on the records of any student who has a Complaint pending that alleges the student violated this Policy. Should a student decide to voluntarily withdraw and/or not participate in the investigation and/or hearing, the process may proceed in the student's absence to completion. The hold will remain on the Respondents account even after withdrawal from the University, and the Respondent may not be permitted to register for classes and/or return to ECU without review by the Title IX coordinator.

Should an employee resign while an investigation is pending, the records of the Director of the Office of Equal Opportunity & Title IX and/or Title IX Coordinator will reflect that status. The investigation will be completed based on the information available. 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 Director of the Office of Equal Opportunity & Title IX and/or the Title IX Coordinator will act promptly and appropriate action to address the effects of the prohibited conduct upon the victim and the community.

6. Failure to Complete Sanctions and/or Comply with Sanctions

All parties are expected to comply with sanctions within the time frame specified by the sanctioning body. Failure to follow or complete the sanctions by the date specified – whether by refusal, neglect, or any other reason – may result in additional sanctions or disciplinary action under University Policy 8.3.4, Progressive Disciplinary Action, or the Student Code of

Conduct, or disciplinary action up to and including termination from the University.

VI. Records

The Office of Equal Opportunity & Title IX and the Title IX Coordinator maintain detailed records of each matter, including individuals involved, investigative steps taken, documentation received, individuals interviewed, decisions reached, and reason(s) for the decisions reached. Complaints and information gathered in the course of an investigation will be kept private to the extent permitted by law. Records will be retained in accordance with the State University Model Records Retention Schedule.

For allegations of Title IX Sexual Harassment, the University will maintain records for a period of seven years of:

- i. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under paragraph (b)(6)(i) of this section, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
- ii. Any appeal and the result therefrom
- iii. Any informal resolution and the result therefrom; and
- iv. All materials used to train Title IX Coordinators, Investigators, decision-makers, and any person who facilitates an informal resolution process. The University will make these training materials publicly available on its website.
- v. Records of any actions, including any supportive measures, taken in response to a Report or Complaint of Title IX Sexual Harassment, as defined in this Policy. EKU will, in each instance, document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to its educational programs or activities. If EKU decides not to provide a Complainant with supportive measures, then EKU will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken.

VII. Training

EKU shall take steps to ensure that any individual designated as a Coordinator under this policy, Investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, receive training as required by applicable state and federal

laws. The University will post the Title IX training materials on its website pursuant to the final Title IX regulations.

VIII. Statement of Rights of the Complainant and the Respondent

A Complainant pursuant to this Policy has the following rights:

- To be treated with respect by EKU 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 an advisor during hearings and meetings;
- To refuse to have an allegation resolved through Informal 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 accordance with these Procedures;
- To participate in any process regardless of whether the complaining individual serves as the Complainant or the University signs the Complainant;
- To be informed in writing of the outcome and 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 Respondent.

A Respondent 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 an advisor during hearings and meetings;
- To refuse to have an allegation resolved through Informal 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 file a reciprocal Complaint if Respondent feels that they have experienced sexual misconduct or discrimination;
- To have Complaints heard in accordance with these Procedures;
- To participate in any process regardless of whether the complaining individual 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 Complainant.

Definitions

In addition to those terms defined above, the following terms also apply to this Policy:

- **Actual Notice:** Notice of violations of this Policy or allegations of violations to this Policy to a University's Title IX Coordinator or any Mandatory Reporter. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the University with actual knowledge is the Respondent. "Notice" as used in this paragraph includes, but is not limited to, a Report to the Office of Equal Opportunity & Title IX and/or to the Title IX Coordinator.
- **Advisor:** A party may choose to have another individual accompany them to meetings with the Investigator(s), or to a hearing. The advisor of choice may be, but is not required to be, an attorney. As described in this Policy, except in cases alleging Title IX Sexual Harassment, the advisor's role is limited to quietly conferring with the party, and the advisor may not address any other participant or the hearing panel.

In cases alleging Title IX Sexual Harassment, the parties may acquire their own third-party advisor, who may be, but is not required to be an attorney. If the party does not select a third-party advisor, the party may choose from a list of ECU employees who volunteer as advisors. Parties to cases alleging Title IX Sexual Harassment must be represented at the hearing by an advisor who will conduct cross-examination of the party's behalf. No exceptions.

- **Age Discrimination:** Discrimination on the basis of age, including but not limited to discrimination against people who are 40 years of age or older.
- **Board of Regents:** For the purpose of responding to appeals under this Policy, the Board of Regents shall not include the Title IX Coordinator, the Investigator(s), or any member of the ECC Hearing Panel.
- **Business Day:** A day during which University offices are open for regular business. The conclusion of a Business Day is considered the time of closure of University offices on a given day. Regular business hours at ECU are Monday through Friday, 8:00 AM to 4:30 PM. Regular business hours are subject to change, and without notice.
- **Coercion:** Threats of serious physical, emotional, or psychological harm to or physical restraint against any person; or any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act will result in serious harm to or physical restraint against any person.

- **Complainant:** A person or entity who is alleged to be the victim of conduct that could constitute a violation of this Policy.
- **Complaint or Formal Complaint:** A document filed by a Complainant, or signed by the Office of Equal Opportunity & Title IX Director or Title IX Coordinator, that alleges a potential violation of this Policy and requests that the University investigate the allegation or allegations. The phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal Complaint. At the time of filing a Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University.
- **Consent:** Words or actions demonstrating a knowing, willful, unambiguous, 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 and fondling) cannot be presumed to be consent for other sexual activity (such as sexual intercourse). A current or previous intimate relationship is not sufficient to constitute consent. Silence, passivity, or the absence of resistance alone is not consent. It is important to not make assumptions regarding whether a partner has consented to a sexual act. A person can withdraw consent at any time during sexual activity by expressing in words or actions that they no longer want the act to continue, and, if that happens, the other person must stop immediately. Consent cannot be obtained by force, threat, duress, coercion, misuse of professional authority/status, by ignoring or acting in spite of the objections of another, or by taking advantage of the incapacitation of another.
- **Dating Violence:** Violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the person subjected to such violence, and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.³ Violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, psychological and/or emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior and may take the form of threats, assault, property damage, violence, or threats of violence to one’s self, a sexual or romantic partner, or to the family members or friends of the sexual or romantic partner.
- **Disability Discrimination:** Treating an individual unfavorably because they have a physical or mental condition that substantially limits a major life activity; have a history of such condition; or, are regarded as having such condition.

³ Violence Against Women Act (VAWA), 34 U.S.C. 12291(a)(10).

- **Discrimination:** Actions that deprive or limit access to education, employment, benefits, or other opportunities and/or treat an individual differently on the basis of an individual's actual or perceived membership in a protected class (as listed in the categories noted in this Policy).
- **Domestic Violence:** A felony or misdemeanor crime of violence committed by: 1) a current or former spouse or intimate partner of the victim; 2) a person with whom the victim shares a child in common; 3) a person who is cohabiting with, or has cohabitated with, the victims as a spouse or intimate partner; 4) a person similarly situated to a spouse of the victim; or 5) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Kentucky or the laws of the jurisdiction in which the crime was committed.⁸ Violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, psychological and/or emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior and may take the form of threats, assault, property damage, violence, or threats of violence to one's self, a sexual or romantic partner, or to the family members or friends of the sexual or romantic partner.
- **Education Program or Activity:** Any location, event, or circumstance over which the University exercises substantial control over both the Respondent and the context in which the alleged violation of this Policy occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.
- **Equity Complaint Appeals Council ("ECAC"):** The ECAC hears appeals 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 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, or their designees when necessary. The members of the ECAC and the Board of Regents shall not include the Title IX Coordinator, the Investigator(s), or any member of the ECC Hearing Panel. The members of the ECAC and the Board of Regents shall receive training in accordance with the requirements of the final Title IX regulations, and shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
- **Equity Complaint Council ("ECC"):** The ECC is a University Standing Committee appointed by the President based on the recommendation of the Director of the Office of Equal Opportunity & Title IX. It consists of a pool of tenured faculty members, staff members, and student members. The student members shall not participate in hearing processes involving employees. The members of the ECC shall not include the Title IX Coordinator, the Investigator(s), or the members of the ECAC or Board of Regents. The members of the ECC shall receive training from the University and shall not have a conflict of interest or bias for or against Complainants or Respondents

generally or an individual Complainant or Respondent.

- **Force:** Includes words, conduct, or appearance that causes an impairment in another.
- **Incapacitation:** A state where an individual lacks the physical and/or mental ability to make informed, rational judgments and decisions (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). Incapacity could result 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.
- **Mandatory Reporter:** A University employee who has been designated as having the authority to institute corrective measures on behalf of the University. This includes:
 - Deans
 - Members of President’s Council
 - Coaches and Coaching Staff
 - Department Chairs
 - Employees in the Office of University Counsel
 - Employees in the Office of Human Resources
 - Academic Advisors
 - Supervisors, including anyone with a Coordinator, Director/ Assistant Director or Vice President title
 - Residence Advisors, Graduate Residence Hall Coordinators & Residence Hall Coordinators

The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the University.

- **National Origin/Ethnicity Discrimination:** Discrimination against individuals because they are from a particular country or part of the world, because of their ethnicity or accent, or because they appear to be of a certain ethnic background. National origin discrimination can also involve treating people unfavorably because they are married to, or associated with, a person of a certain national origin. Discrimination can occur when the Complainant and the Respondent are of the same national origin.
- **Non-Consensual Sexual Contact:** Any physical contact, however slight, with another person of a sexual nature without that person’s consent. Non-consensual sexual contact could include, but is not limited to, unwanted touching or forced touching of another individual or attempting to sexually penetrate another individual.
- **Non-Title IX Sexual Harassment:** Any unwelcome sexual advance, request for

sexual favors, or other unwelcome conduct of a sexual nature, whether verbal, physical, graphic, or otherwise. Harassment can be divided into two types of conduct:

- *Quid Pro Quo Harassment* – Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, academic standing, or participation in any aspect of the University's program or activity or is used as the basis for the University's decisions affecting the individual.
- *Hostile Environment* – Exists when the conduct is sufficiently severe, pervasive, or persistent that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's education or employment programs and/or activities.

Whether conduct is sufficiently severe, pervasive, or persistent is determined both from a subjective and objective perspective. A hostile environment can be created by oral, written, graphic, or physical conduct. A determination of a hostile environment considers the totality of the circumstances and includes: 1) the degree of interference; 2) the type, frequency, and duration of the conduct; 3) the relationship between the Respondent and the Complainant; 4) the nature and severity of the conduct; 5) whether the conduct was directed at more than one person; 6) whether the conduct arose in the context of other discriminatory conduct; and 7) whether the conduct implicates concerns related to academic freedom or protected speech. A single instance may be sufficient for a finding of a hostile environment if the conduct is serious enough to reasonably support such a finding, particularly if the conduct is physical.

Sexual harassment is not limited to those circumstances in which the harasser only harasses members of the opposite sex.

- **Off-Campus Conduct:** This Policy applies to conduct that occurs off campus and has continuing adverse effects on, or creates a hostile environment for, any University Community Member on-campus or in any University employment or education program or activity. 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.
- **On-Campus Conduct:** This Policy applies to conduct that occurs on-campus, including conduct on property owned or controlled by the University.
- **Online Communications:** Any online postings or other electronic communication by students or employees occurring completely outside of EKU's control (for example: not on University-owned or operated computing hardware, networks, websites, or between or among University email accounts) will be subject to this Policy when those online behaviors can be shown to relate to discrimination, harassment or other

conduct prohibited by this Policy and has continuing adverse effects on, or creates a hostile environment for, any University Community Member on campus or in any University employment or education program or activity.

- **Pregnancy Discrimination:** Treating a woman unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.
- **Preponderance of the Evidence Standard:** Evidence is such that it would persuade a reasonable person that a proposition is more probably true than not true. A finding that is “more likely than not” to be true would satisfy this standard.
- **Race/Color Discrimination:** Discrimination on the basis of race or because of certain race 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 associates with, a person of a certain race or color. Discrimination can occur when the Complainant and the Respondent are the same race or color.
- **Relationship Violence:** Broad term that encompasses domestic violence, dating violence, and stalking, and could consist of a single act of violence or a pattern of violent acts that includes, but is not limited to, sexual or physical abuse.
- **Religious Discrimination:** Treating an individual unfavorably because of their religious beliefs or because they do not subscribe to a belief system. The law protects not only people who belong to a traditional, organized religion, 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.
- **Remedies:** Measures taken by the University that are intended and designed to restore access or preserves equal access to the University’s programs and activities. Such remedies may include supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.
- **Report:** Any report to the Office of Equal Opportunity & Title IX , the Title IX Coordinator, and/or any employee with the authority to take corrective action on behalf of the University (as defined above) of information that could constitute a potential violation of this Policy. The term “report” includes Complaints.
- **Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute a violation of this Policy
- **Retaliation:** Intimidation, threats, coercion, or discrimination against any individual

for the purpose of interfering with any right or privilege secured by applicable civil rights law and/or this Policy, or because the individual has made a Report or Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under applicable civil rights law and/or this Policy.

Retaliation includes intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve discrimination or harassment, but arise out of the same facts or circumstances as a Report or Complaint of prohibited conduct, or a Report or Complaint of prohibited conduct, for the purpose of interfering with any right or privilege secured by Title IX or this Policy.

Retaliation does not include the exercise of rights protected under the First Amendment, good faith actions lawfully pursued in response to an allegation of a violation of this Policy, or charging an individual with a code of conduct violation for making a materially or deliberately false statement or accusation in the course of a proceeding under this Policy, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Retaliation can be committed by or against any individual or group of individuals, including a Respondent or Complainant. Retaliation is still prohibited even when there is a finding of no responsibility for the allegation.

- **Sex Discrimination:** Discrimination on the basis of an individual's sex. Sex Discrimination also covers sexual harassment and sexual assault. Discrimination against an individual because of gender identity, including transgender status, or because of sexual orientation is discrimination because of sex. Protection from sex discrimination extends to all students and employees, regardless of national origin, immigration status, or citizenship.
- **Sexual Assault:** An offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (FBI).⁴ This includes forcible rape and forcible fondling. Forcible rape is defined as any sexual penetration, no matter how slight, of the vagina or anus or any bodily opening with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim and committed by force, threat, coercion or through exploitation of another's condition of which Respondent was aware or which a reasonable person would have been aware. Forcible fondling is defined as the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity.

⁴ The Clery Act, 20 U.S.C. 1092(f)(6)(A)(v).

- **Sexual Exploitation:** Action of taking non-consensual sexual advantage of another for one’s own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to: 1) surreptitiously observing another individual’s nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all involved; 2) non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity of the person being exploited, or distribution of such without the knowledge and consent of all involved; 3) exposing one’s genitals or inducing another to expose their own genitals in non-consensual circumstances; 4) inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity; and 5) 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.
- **Sexual Harassment:** Sexual harassment is not limited to those circumstances in which the harasser only harasses members of the opposite sex, and can occur when the claimant and the alleged perpetrator are members of the same sex. There are two types of sexual harassment prohibited by this Policy: Non-Title IX Sexual Harassment and Title IX Sexual Harassment.
- **Sexual Misconduct:** Sexual misconduct includes Sexual Harassment (Title IX and non-Title IX), Sexual Assault, Dating Violence, Domestic Violence, Non-Consensual Sexual Contact, Sexual Exploitation, and Stalking. The Commonwealth of Kentucky defines various violent and/or non-consensual sexual acts as crimes in KRS 510. The University may take action whether criminal charges are filed or not filed and the University’s Procedures are substantively different from those used in the criminal justice system.
- **Sexual Violence:** A physical sexual act perpetrated without consent. This term incorporates all acts that fall within the definition of non-consensual sexual penetration (rape) and non-consensual sexual contact (sexual assault).
- **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.⁵ A “course of conduct” consists of two or more acts, including, but not limited to, acts in which a person directly, indirectly, or through a third party, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person’s property. “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical treatment of professional counseling. This definition incorporates the concept of cyber-stalking, which employs the use of the internet, social media, blogs, texts, cell phones, or other similar devices or forms of communication.

⁵ VAWA, 34 U.S.C. 12291(a)(30).

- **Title IX Hearing Officer:** An individual contracted by the University to preside over a hearing to resolve alleged violations of Title IX. The Title IX Hearing Officer is responsible for maintaining order and determining the sequence of events during a hearing. The Title IX Hearing Officer may direct any person who fails to comply with procedures during the hearing, disrupts, or obstructs the hearing to leave the hearing. The Title IX Hearing Officer is the decision-maker for all evidentiary and procedural issues. The Hearing Officer may not dismiss a matter that the Title IX Coordinator has determined is ripe for hearing.

- **Title IX Sexual Harassment:** As defined by the federal Title IX regulations issued by the U.S. Department of Education, conduct on the basis of sex that is:
 - Taken against a person in the United States;
 - Occurs in a University education program or activity;
 - Reported by or on behalf of a Complainant who, at the time of the report filing, was participating in or attempting to participate in a University education program or activity; and
 - Meets the definition of one of the following categories:
 - *Quid Pro Quo Harassment* -- An employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
 - *Hostile Environment* - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
 - Sexual Assault, Dating Violence, Domestic Violence, or Stalking, as defined by this Policy."

- **University Community Member:** All faculty, staff, students, Board of Regents members, and volunteers functioning on behalf of the University, as well as anyone doing business for or with the University.

- **University Programs and Activities:** This Policy applies to conduct that occurs in the context of University employment or education programs or activities, including, but not limited to, the University's Model Laboratory School (with the exception of student conduct to be processed through Model's student conduct policies), University-sponsored study abroad, internships, graduate and professional programs, intercollegiate athletics, or other affiliated programs.

- **Veteran Discrimination:** Discrimination against an individual on the basis of that individual’s veteran status or disabled veteran status.

Responsibilities

The Office of Equal Opportunity & Title IX and/or the Title IX Coordinator is responsible for administering this Policy.

Violations of this Policy

The University will act on any Complaint or notice of violation of this policy that is received by the Office of Equal Opportunity & Title IX, the Title IX Coordinator or any Mandatory Reporter. It is the University’s decision whether or not to initiate an investigation into any report of a possible violation of this 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
- 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> |
|------------------|-----------------|--------------------|
| August 6, 2024 | Policy Designee | Editorial Revision |
| January 25, 2024 | Policy Designee | Editorial/Legal |

| | | |
|---------------------------|---------------------------------------|------------------------|
| October 28, 2022 | Policy Designee | Revisions |
| September 10, 2020 | Board of Regents | Editorial Revision |
| August 18, 2020 | President David T. McFaddin | Adopted |
| June 18, 2019 | Board of Regents | Adopted Interim |
| May 21, 2018 | Director, Policy and Legal Operations | Adopted |
| 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