



Policy on Discrimination and Harassment

Policy 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 this "Policy on 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 in public educational institutions and to reflect and maintain its values as an institution and the expectations of its community.

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.

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, non-consensual sexual intercourse and/or contact, intimate partner violence, sexual exploitation, and stalking. This Policy further prohibits aiding or inciting another person(s) to violate this Policy. The 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, resolve complaints under this Policy in a fair, equitable, and transparent manner that respects the due process rights of all participants and protects the safety and welfare of students and the community. EKU is committed to take prompt and equitable action to stop and eliminate the conduct prohibited under this Policy ("Prohibited Conduct"), to prevent the recurrence of any harassment, and to correct its discriminatory effects. The University is committed to the ongoing assessment and improvement of the Policy and EKU's Title IX compliance program.

The Office of Equity and Inclusion is responsible for administering this Policy.

Inquiries

Reports of Discrimination, Harassment, and/or Retaliation should be promptly made to the Office of Equity and Inclusion (OEI). The following persons have been designated to handle inquiries regarding this Policy:

- John W. Dixon
Director of the Office of Equity and Inclusion & Title IX Coordinator
john.dixon@eku.edu
(859) 622-8020

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 privacy. Reports of Discrimination on the part of the Title IX Coordinator and/or the Director of the OEI should be reported to Office of the President at EKU.

External inquiries may be made to:

- Equal Employment Opportunity Commission (EEOC)
Contact: <http://www.eeoc.gov/contact/>
- Office for Civil Rights (OCR)
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Phone: (215) 656-8541
Fax: (215) 656-8605
Email: OCR@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
Fax: (502) 595-4801
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 made on or after the effective date of this Policy, regardless of when the incident(s) occurred.

A. Persons Covered

This Policy applies to University students, University employees, vendors, contractors, guests, or 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.

B. Locations Covered

This Policy applies to acts of Prohibited Conduct committed by or against students, employees or third parties, as described below.

- **On-Campus Conduct:** This Policy applies to conduct that occurs on-campus, including conduct on property owned or controlled by 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.

- **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.
- **Online Communications:** Any online postings or other electronic communication by students or employees occurring completely outside of the University'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 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.

Background

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

The Title IX Coordinator's duties include overseeing the University's efforts to comply with Title IX, 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 Office of Equity and Inclusion is responsible for administering this Policy. The Director of OEI is responsible for ECU's compliance with all other federal, state, and local laws, as well as University Policies and Procedures, regarding discrimination. OEI investigates all allegations of prohibited discrimination and harassment that pertain to this Policy.

For purposes of interpreting authority for this Policy, the Title IX Coordinator is responsible for interpretation of issues of discrimination on the basis of sex/gender. The Director of OEI is responsible for interpretation of all other issues within the 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:** Discrimination on the basis of age, including but not limited to discrimination against people who are 40 years of age or older.
- **Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person subjected to such violence.
- **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.
- **Intimate Partner Violence:** Any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, spousal, domestic, or other intimate relationship with the Respondent. Intimate Partner 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.
- **Violence:** Any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, spousal, domestic, or other intimate relationship with the Respondent. Intimate Partner 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.
- **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 Penetration:** Any sexual penetration, however slight, of any bodily opening with any object or body part without consent, 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.
- **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.

- **Pregnancy Discrimination:** Treating a woman unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.
- **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 his or her religious beliefs or because he or she does 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.
- **Retaliation:** An adverse action against an individual because of the individual's participation in a protected activity, which includes making a report of discrimination, harassment, or retaliation or otherwise participating in an investigation of such a report, including a person's good faith: 1) opposition to prohibited conduct; 2) report of prohibited conduct to the University; and/or 3) participation, or reasonable expectation of participation, in any manner in an investigation, proceeding, hearing, or interim remedial action under the Policy.

Adverse action includes conduct that threatens, harasses, coerces, or in any other way seeks to discourage a reasonable person from engaging in activity protected under this Policy. Retaliation can be committed by or against any individual or group of individuals, including a Respondent or Complainant. Retaliation does not include good faith actions lawfully pursued in response to an allegation of a violation of this Policy. 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 violence. 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 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:** 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.

- **Sexual Misconduct:** Sexual misconduct includes sexual harassment, dating violence, domestic violence, intimate partner violence, relationship violence, non-consensual sexual contact (sexual assault), non-consensual sexual penetration (rape), sexual exploitation, and stalking. Sexual misconduct can occur when the claimant and the alleged perpetrator are members of the same sex. 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. 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.
- **Veteran Discrimination:** Discrimination against an individual on the basis of that individual's veteran status or disabled veteran status.

To provide clarity as to the kinds of behavior which constitute Sexual Misconduct and/or Intimate Partner Violence, the University further defines key terms which the University will use in evaluating whether Prohibited Conduct has occurred.

- **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.
- **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 he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately. Consent cannot be obtained by force, 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.

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

- **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.

III. Interim Remedial Action

Upon receipt of a Report or Complaint under this Policy, the University will provide, when necessary, reasonable and appropriate interim remedial action designed to eliminate alleged harassment, discrimination, and/or retaliation. The University will make reasonable efforts to communicate with the parties to ensure that all safety and physical well-being concerns are being addressed. Interim remedial actions may be imposed regardless of whether disciplinary action is sought by a potential Complainant or the University. A potential Complainant or Respondent may request an interim remedial action, or the University may choose to impose remedial interim actions at its discretion to ensure the safety of all parties, the broader University community, and/or the integrity of the process. The University will maintain the privacy of any interim remedial actions provided under this Policy to the extent practicable and 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.

Where the reported conduct poses a substantial and immediate threat of harm to the safety or well-being of an individual, members of the University community, or the performance of University functions, EKU may place a student on interim suspension or impose leave for an employee. Pending resolution of the Report or Complaint, the individual may be denied access to campus facilities and/or all other University activities or privileges for which the student or employee might otherwise be eligible, as the University determines appropriate.

A Respondent who has been put on interim suspension or has been assigned a change in on-campus housing has a right to make an appeal request. The written appeal request should state the reasons why the Respondent believes the suspension and/or housing change should be overturned. The appeal request must be received by the Director of OEI within five (5) Business Days of the notification of the issuance of a temporary suspension. The Director of OEI will review the appeal to determine whether the decision was supported. The

Director of OEI'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 OEI is final.

During a temporary suspension, a student Respondent may be denied access to the University's campus, facilities, or events. As determined by OEI, this restriction includes classes and/or all other University activities or privileges for which the student might otherwise be eligible. Similarly, alternative coursework option may be pursued to ensure as minimal 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 OEI 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 OEI 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 OEI, 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

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.

Reports of discrimination, harassment, and/or retaliation should be promptly made to OEI. Employees may also notify their supervisor. Students may notify an administrative advisor or faculty member. 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 OEI 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 OEI and criminal reports may be made simultaneously.

B. Reporting to the University

Individuals are encouraged to contact OEI and/or the Title IX Coordinator, either directly or through OEI'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 of those initiating a Report.

C. Reporting by University Employees

University employees who know, or in the exercise of reasonable care should have known, of allegations of violations of the Policy, are obligated to report those allegations to OEI as soon as practicable after becoming aware of the allegations. ECU considers all University employees to be "responsible employees" for reporting purposes. Failure 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.¹

V. Report and Complaint Procedures

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

A. Filing a Complaint

A formal Complaint may be filed with, or in some instances by, OEI. 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. However, when investigation and resolution are necessary to protect the University community, the University reserves the right to investigate and pursue a Report to resolution even when the potential Complainant chooses not to initiate or participate in a University process.

B. Privacy and Confidentiality

The University will, to the extent permitted by law, treat all Complaints with the maximum privacy possible. 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 OEI not share their name (or other identifiable information) with the Respondent, or that OEI take no action in response to a Report. OEI, as appropriate, has the responsibility for evaluating confidentiality requests. If the potential Complainant makes such a request, OEI 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. OEI 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

Both parties have a right to an investigation and resolution process free of conflicts of interest by any University employee or official involved in the process. The University employee or official involved in the process 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:

- The member has a personal bias or prejudice concerning a participant in the process, or has personal knowledge of disputed facts concerning the matter;
- 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;
- The member or a person in his or her family is related to a participant in the process; or
- 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 OEI of potential conflicts of interest is considered a violation of this Policy.

A Complaint or potential Complainant and the Respondent have the opportunity to object to the participation of any University official or employee involved in the process on the grounds of bias or conflict of interest. The

¹ 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.

investigation or proceeding will be temporarily suspended and the Director of OEI 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 History of the Parties

The Complainant or potential Complainant and the Respondent's character or reputation regarding past sexual activity will not be considered as evidence. However, prior sexual history may be considered under the following limited circumstances:

- Where there was a prior or ongoing relationship between the parties, and the Respondent asserts that consent was sought and given, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent.
- To analyze allegations of a pattern or practice of past conduct by the Respondent.
- To assess the parties' credibility with respect to specific facts obtained in the investigation.

In addition, other conduct by either party may, under limited circumstances, be relevant to establish intent, motive, absence of mistake, to explain an injury or physical finding, or another ground deemed relevant by OEI.

E. Timeframe for Investigations

The University will complete all investigations, hearings, and appeals within a reasonable time of the filing of a Complaint. These processes may be delayed from time to time for a reasonable period as necessary for good cause. OEI will provide notice of any extensions to the parties and describe the reason(s) for the extension.

F. Initiation of a Complaint

1. *Intake Meeting with potential Complainant*

Upon receipt of a Report, OEI will reach out to the potential Complainant for an intake meeting as soon as is reasonably possible. If the potential Complainant is unknown, OEI will make reasonable efforts to identify the likely potential Complainant and reach out to that person. During the intake meeting, OEI will seek to get a basic understanding of the reported conduct so that OEI can appropriately assess key facts to determine how to proceed. Follow-up intake meetings will be had as necessary.

2. *Initial Determination*

OEI will make an initial determination as to whether the reported conduct, if true, could constitute a violation of the Policy. This determination will be made based on information in the Report as well as information provided by the potential Complainant during the intake meeting(s).

If the reported conduct does not appear to allege a violation of this Policy, or if conflict resolution is requested by the potential Complainant and appears to be appropriate given the nature of the reported conduct, or if the potential Complainant requests no further action by OEI and no further action is appropriate given the nature of the reported conduct, then the matter will not proceed to investigation. OEI will provide written notice to the potential Complainant of its determination not to proceed with an investigation.

In all other instances, if OEI determines that the allegations, if true, could constitute a violation of the Policy, and that an investigation must commence, the matter will proceed to an investigation. Where the potential Complainant chooses to participate in the investigation, OEI will have the person confirm, in writing, their specific allegations as well as their understanding of the scope of OEI's investigation (the "Complaint"). Where a potential Complainant chooses to not participate in an investigation that is moving forward regardless, OEI will prepare a writing of the specific allegations as well as the scope of the investigation (also the "Complaint") prior to the start of the investigation.

3. *Notice of the Investigation to the Parties*

OEI will notify the Complainant (or potential Complainant) and Respondent, in writing and simultaneously, of its decision to proceed to investigation. This notice will include a copy of the Complaint. The written notification to the Respondent will include facts sufficient to apprise the Respondent of the nature of the allegations. The University will provide the Respondent with sufficient time to review the notice before any initial interview.

G. Conflict Resolution

Conflict Resolution is a voluntary, structured interaction between or among affected parties that is designed to reach an effective resolution to an allegation filed under this Policy. The University recognizes that Conflict 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. Conflict Resolution options are designed to eliminate the conduct at issue, prevent its recurrence, and remedy its effects in an effective manner that addresses the expressed interests of the parties and the safety and welfare of the campus community.

Conflict Resolution is not appropriate for all forms of possible Prohibited Conduct under the Policy and OEI retains the discretion to determine which cases are appropriate for Conflict Resolution. OEI will determine if Conflict Resolution is appropriate based upon: 1) the willingness of the parties to participate in Conflict Resolution; 2) the nature of the conduct at issue; and 3) the susceptibility of the conduct to Conflict Resolution. Mediation, even if voluntary, will not be used in cases including any allegation of sexual violence.

Participation in the Conflict Resolution process is voluntary and both a potential Complainant and a Respondent can request to end this type of resolution and pursue an investigation at any time.

Individuals may be accompanied by a Silent Advisor at any meetings related to the Conflict Resolution process. Information shared or obtained during Conflict Resolution will be treated as private 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.

OEI 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 will provide periodic status updates, as appropriate, to the parties.

University investigations may be delayed a maximum of ten (10) Business Days 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 OEI's investigation is complete, OEI will prepare a Preliminary Report. The Preliminary Report is a written summary of the relevant evidence gathered during the course of the investigation. The Preliminary Report will state specific factual findings and will include OEI's determination as to whether the evidence supports that Respondent has violated the Policy. The standard for determining each factual finding will be the Preponderance of the Evidence Standard.

The Preliminary Report will be provided to the parties for review. The parties may respond to the Preliminary Report within five (5) 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. OEI 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. *Final Report*

OEI will issue a Final Report that will include: the Preliminary Report; the parties' responses to the Preliminary Report (if applicable); OEI's determinations regarding the parties' responses (if applicable); and OEI's final finding(s) as to whether the evidence supports that Respondent has violated the Policy. The Final Report will be simultaneously provided to both parties.

If the Final Report concludes that a preponderance of the evidence supports a finding of a Policy violation, OEI may: 1) recommend conflict resolution, if appropriate based on the criteria set forth elsewhere in this Policy; or 2) move forward to the Formal Resolution Process outlined below.

If the Final Report concludes that a preponderance of the evidence does not support a finding of a Policy violation, OEI will close its file on the matter, unless either party submits to OEI a written request for the Formal Resolution Process outlined below. The written request must be submitted to OEI within three (3) Business Days of the date on which the Final Report was provided. In the event that either party submits a written request for the Formal Resolution Process, OEI may recommend conflict resolution, if appropriate based on the criteria set forth elsewhere in this Policy. Otherwise, the Formal Resolution Process will be initiated. OEI will provide notice to the opposing party.

J. Formal Resolution Process

1. ***Student Respondent***

a. Hearing Panel

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 for violations of the Policy. The ECC has been given the authority by the University's Board of Regents to impose a sanction for any violation of the Policy, up to and including, suspension or expulsion.

In cases involving a student Respondent, the ECC Hearing Panel shall consist of two (2) faculty members, two (2) staff members, and one (1) student member. At least three (3) members must be present to constitute a quorum.

The ECC Hearing Panel shall not investigate facts in a Complaint, and shall consider only the evidence presented and any facts that may be pertinent to the sanctioning or discipline determination.

b. 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 OEI of the substance of the communication and provide the parties an opportunity to respond.

c. Hearing and Sanctioning Proceduresi. *Pre-Hearing Procedures*

When a matter is to be processed through the Formal Resolution Process, OEI 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. OEI will also contact and separately discuss with the Complainant and Respondent the hearing and sanctioning process.

The Complainant and Respondent shall submit to OEI any information they wish to present at the hearing, the name(s) of their Silent Advisor, a list of questions, if desired, and a list of possible witnesses two (2) Business Days prior to the hearing.

A Respondent or Complainant may request to postpone the hearing for reasonable cause. The Respondent or Complainant shall submit to OEI 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. OEI will forward the request to the Chair of the selected Hearing Panel, who may accept or deny the request, after considering the nature of the request and the incident at issue.

ii. *Procedures before the ECC Hearing Panel*

Procedures before the ECC Hearing Panel will be held in accordance with the following:

- The OEI will be called as the first witness and will testify as to the findings of the investigation.
- Both the Complainant and the Respondent may choose to participate in a manner that does not require their presence in the same room as the other.
- For Title IX-related matters, both the Complainant and the Respondent are entitled to have one Silent Advisor or support person present, who may be an attorney. During the hearing, the Silent Advisor or support person may confer only with the party she/he is advising and is not permitted to speak to the hearing body or to any other hearing participant before, during, or after the hearing. A Silent Advisor or support person may be dismissed if she/he attempts to directly participate in the proceedings or is otherwise disruptive, in the judgment of the majority of the ECC Hearing Panel.
- 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.
- 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.
- Both the Complainant and the Respondent may rebut unfavorable inferences.
- Both the Complainant and the Respondent may provide an impact statement.
- A record shall be made of the hearing and maintained in the OEI in compliance with the State University Model Records Retention Schedule.
- Both the Complainant and the Respondent shall be simultaneously provided written notification of: 1) the determination of the Hearing Panel; and 2) University Procedures to appeal the result of the proceeding.

iii. *Sanctions*

Factors considered when determining a sanction may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation;
- An individual's disciplinary history;
- Class standing (hours earned) where necessary to determine the impact of the sanction on the Complainant, Respondent, or University community. The academic records of the parties shall not be considered in determining sanctions;
- Previous 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 students who are found to be responsible for specific violations of the 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 the Policy violation may be cause for additional disciplinary action.
- **Censure:** A written reprimand for violating the Policy. This conduct status specifies a period of time during which the student'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.
- **Disciplinary Probation:** Exclusion from participation in privileged activities for a specified period of time (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 the Policy. To enforce this sanction, 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 the 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 student's conduct file and will be permanently recorded on the student's academic transcript. Conditions for readmission may be specified in the suspension notice.
- **Expulsion:** 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.
- **Revocation of Admission and/or Degree:** 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:** The University may withhold awarding a degree otherwise earned until the completion of the process set forth in the 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.

Sanctions imposed by the ECC Hearing Panel are implemented immediately. Sanctions of suspension and expulsion are permanently noted on a student's transcript.

d. Appeals Procedures

Appeals are 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. All appeals must be submitted in writing to the Director of OEI within five (5) Business Days of the receipt of the written decision rendered by the ECC Hearing Panel. The Appeal will then be forwarded.

Either party may appeal the ECC Determination of Responsibility and/or the sanctions imposed by the ECC. The appeal in either or both instances must be based on one or more of the following three grounds:

- *Significant Procedural Error:* A procedural error occurred that significantly impacted the outcome of the investigation. A description of the error and its impact on the outcome of the case must be included in the written appeal;
- *New Information:* New information has arisen that was not available or known during the investigation and that could significantly impact the findings and/or sanctions. Information that was known to the Complainant or Respondent during the investigation, but which he or she chose not to present, is not new information. A summary of this new evidence and its potential impact on the investigation findings and/or sanctions must be included in the written appeal.
- *Inadequate Justification:* The sanction is inconsistent with the recommended sanctions for violations of the Policy.

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. Appeals are confined to a review of 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 the Board of Regents shall not consider matters outside of the 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 OEI 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 not meet the standards for an appeal, the ECAC or Board of Regents will simultaneously notify both parties of that outcome in writing. If no ground(s) for appeal exists, the appeal will be denied, and the decision will be final.

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 take appropriate action as indicated below.

- **Significant Procedural Error:** If it is determined that a procedural error occurred that was substantially prejudicial to the outcome of the investigation and/or sanctions, the ECAC or Board of Regents will return the matter to OEI with instructions to correct the error, and to reconsider the findings as appropriate. In rare cases, where the procedural error cannot be corrected by OEI (as in cases of bias), the ECAC or Board of Regents may order a new investigation with a new investigator.

- **New Information:** If the ECAC or Board of Regents determines that new information should be considered that could impact the outcome of the investigation, the matter will be returned to the OEI to reconsider the complaint in light of the new information only, and to reconsider the original findings as appropriate. OEI 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 information should be considered that could impact the sanctions, the ECAC or the Board of Regents may issue a new sanction.
- **Inadequate Justification:** If the ECAC or the Board of Regents determines that there is inadequate justification for the sanctions, the ECAC or the Board of Regents may issue new sanctions.

The decision of the ECAC or the Board of Regents shall be final.

e. Student Withdrawal While Charges Pending

The University places a hold on the records of any student who has a Complaint pending that alleges the student violated the Policy. Should a student decide to voluntarily withdraw and/or not participate in the investigation and/or hearing, the process will nonetheless proceed in the student's absence to completion. The student will not be permitted to register for classes and/or return to ECU unless the conditions of all sanctions have been satisfied.

f. 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.

2. Employee Respondent

a. Hearing Panel

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, recommendations for any applicable sanctions for violations of the Policy. 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.

In cases involving a staff Respondent, the ECC Hearing Panel shall consist of two (2) faculty members and three (3) staff members, to be selected from the pool at random. In cases involving a faculty member Respondent, the ECC Hearing Panel shall consist of three (3) faculty members and two staff members, to be selected from the pool at random. At least three (3) members must be present to constitute a quorum.

The ECC Hearing Panel shall not investigate facts in a Complaint, and shall consider only the evidence presented and any facts that may be pertinent to the sanctioning or discipline determination.

b. 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 OEI of the substance of the communication and provide the parties an opportunity to respond.

c. Disciplinary Action

Disciplinary or appropriate responsive actions will be determined by the ECC. Factors considered when determining a disciplinary action may include, but are not limited to:

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

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

d. Hearing and Disciplinary Procedures*i. Pre-Hearing Procedures*

When a matter is to be processed through the Formal Resolution Process, OEI 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. OEI will also contact and separately discuss with the Complainant and Respondent the hearing and sanctioning process.

The Complainant and Respondent shall submit to OEI any information they wish to present at the hearing, the name(s) of their Silent Advisor, a list of questions, if desired, and a list of possible witnesses two (2) Business Days prior to the hearing.

A Respondent or Complainant may request to postpone the hearing for reasonable cause. The Respondent or Complainant shall submit to the Director of OEI 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 Chair of the selected Hearing Panel may accept or deny the request, after considering the nature of the request and the incident at issue.

ii. Procedures before the ECC Hearing Panel

Procedures before the ECC Hearing Panel will be held in accordance with the following:

- The OEI will be called as the first witness and will testify as to the findings of the investigation.
- Both the Complainant and the Respondent may choose to participate in a manner that does not require their presence in the same room as the other.
- For Title IX-related matters, both the Complainant and the Respondent are entitled to have one Silent Advisor or support person present, who may be an attorney. During the hearing, the Silent Advisor or support person may confer only with the party she/he is advising and is not permitted to speak to the hearing body or to any other hearing participant before, during, or after the hearing. A Silent Advisor or support person may be dismissed if she/he attempts to directly participate in the proceedings or is otherwise disruptive, in the judgment of the majority of the ECC Hearing Panel.
- 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.

- 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.
- Both the Complainant and the Respondent may rebut unfavorable inferences.
- Both the Complainant and the Respondent may provide an impact statement.
- A record shall be made of the hearing and maintained in the OEI in compliance with the State University Model Records Retention Schedule.
- Both the Complainant and the Respondent shall be simultaneously provided written notification of: 1) the determination of the Hearing Panel; and 2) University Procedures to appeal the result of the proceeding.

iii. Sanctions

Factors considered when determining a sanction may include, but are not limited to:

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

The following are the possible sanctions that will be imposed upon employees who are found to be responsible for specific violations of the 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 the Policy violation may be cause for additional disciplinary action.
- **Censure:** A written reprimand for violating the Policy. This conduct status specifies a period of time during which the employee's good standing with the University may be in jeopardy. 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. 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 the Policy.
- **Suspension:** Exclusion from University premises 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 employee's conduct file.
- **Termination:** 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.

- **Other:** Other sanctions may be imposed instead of, or in addition to, those specified here. Service, education or research projects may also be assigned.

Sanctions recommended by the ECC Panel will be forwarded to the appropriate Vice President/President and Human Resources immediately for review.

e. Appeals Procedures

Appeals are considered by the University's Equity Complaint Appeals Council ("ECAC"), except that a tenured faculty member has a right to appeal the discipline of termination to the Board of Regents pursuant KRS 164.360 (see below). All appeals must be submitted in writing to the Director of OEI within five (5) Business Days of the receipt of the written decision rendered by the ECC Hearing Panel. The Appeal will then be forwarded.

Appeals are confined to a review of the written record on appeal, including but not limited to evidence presented at the hearing and documentation pertinent to the grounds for appeal. The ECAC shall not consider matters outside of the hearing record in making a determination.

Either party may appeal the ECC Determination of Responsibility. Either party may appeal the sanctions recommended by the ECC. However, pursuant to KRS 164.360, in instances in which the Respondent is a tenured faculty member, the Complainant may appeal sanctions based on the claim that termination should have been imposed only in cases of Sexual Misconduct or Sexual Harassment. The appeal must be based on one of three grounds:

- *Significant Procedural Error:* A procedural error occurred that significantly impacted the outcome of the investigation. A description of the error and its impact on the outcome of the case must be included in the written appeal;
- *New Information:* New information has arisen that was not available or known during the investigation and that could significantly impact the findings and/or sanctions. Information that was known by the Complainant or Respondent during the investigation, but which he or she chose not to present, is not new information. A summary of this new evidence and its potential impact on the investigation findings and/or sanctions must be included in the written appeal.
- *Inadequate Justification or Inconsistent Disciplinary Action:* The sanction is inconsistent with the prescribed sanctions for violations of other potentially applicable employee policies.

The role of the ECAC regarding appeals is limited. Appeals are not intended to be a full rehearing of the Complaint. Appeals are confined to a review of the investigative and hearing record for the grounds stated above. The ECAC 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 receives an unauthorized communication bearing upon the substance of a Complaint, the member shall promptly notify the Complainant, Respondent, University representative, and OEI of the substance of the communication and provide the parties with an opportunity to respond.

If the ECAC determines that a submitted appeal does not meet the standards for an appeal, the ECAC will simultaneously notify both parties of that outcome in writing. If no ground(s) for appeal exists, the appeal will be denied, and the decision will be final

If the ECAC determines that a submitted appeal does meet the standards for an appeal, the ECAC will take appropriate action as indicated below:

- **Significant Procedural Error:** If it is determined that a procedural error occurred that was substantially prejudicial to the outcome of the investigation and/or sanction, the ECAC will return the matter to OEI with instructions to correct the error, and to reconsider the findings as appropriate. In

rare cases, where the procedural error cannot be corrected by OEI (as in cases of bias), the ECAC or Board of Regents may order a new investigation with a new investigator.

- **New Information:** If the ECAC determines that new information should be considered, the matter will be returned to the OEI to reconsider the complaint in light of the new information only, and to reconsider the original findings as appropriate. OEI 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.
- **Inadequate Justification or Inconsistent Disciplinary Action:** If the ECAC determines that there is inadequate justification for the sanction, or that the sanction is inconsistent with other potentially applicable employee policies, the ECAC may issue a new recommended sanction. However, please see below for additional information regarding Appeals of Tenured Faculty Respondent subject to termination.

The decision of the ECAC shall be final.

f. 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 OEI investigator who will then review the factual findings to determine if the new information changes the factual finding. If the investigator determines that the factual finding has changed, the new factual finding will be sent to the appropriate hearing panel for sanctioning.
- A faculty member shall not be removed until after ten (10) days' notice in writing, stating the nature of the charges preferred, and after an opportunity has been given 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.

g. Employee Resignation

Should an employee resign while an investigation is pending, the records of the Director of OEI 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 OEI and/or the Title IX Coordinator will act promptly and effectively to remedy the effects of the prohibited conduct upon the victim and the community.

h. Failure to Complete Disciplinary Action and/or Comply with Sanctions

Failure to follow through on disciplinary, responsive actions, and/or corrective actions by the date specified – whether by refusal, neglect, or any other reason – will result in additional disciplinary action up to and including termination from the University.

3. *Third Party Respondent*

For Complaints involving third party respondents, OEI will take prompt action to ensure campus safety. Such action may include limiting or restricting access to the University's campus and/or educational and employment programs and activities.

VI. **Records**

OEI 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.

VII. **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 conflict resolution procedures;
- To receive amnesty for certain student misconduct, such as alcohol or drug violations, that occurred ancillary to the incident;
- To be free from retaliation for reporting violations of this Policy or cooperating with an investigation;
- To have complaints heard in 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 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 conflict resolution procedures;
- To receive amnesty for certain student misconduct, such as alcohol or drug violations, that occurred ancillary to the incident;
- To be free from retaliation for reporting violations of this Policy or cooperating with an investigation;
- To 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:

- **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 EKU are Monday through Friday, 8:00 AM to 4:30 PM. Regular business hours are subject to change, and without notice.
- **Complainant:** A person or entity, including the University, who files a Complaint with OEI alleging a potential violation of this Policy.
- **Complaint:** A signed written document by a Complainant, or by an entity on behalf of a potential Complainant, that alleges a potential violation of 1.4.1P. The Complaint must state the specific allegations to be investigated by OEI as well as the scope of OEI's investigation.
- **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.
- **Equity Complaint Council ("ECC"):** The ECC is a University Standing Committee appointed by the President based on the recommendation of the Director of OEI. It consists of a pool of tenured faculty members, staff members, and student members. The ECC Chair(s) shall be a tenured faculty member appointed by the President based on the recommendation of the Director of OEI. The student member shall not participate in hearing processes involving employees.
- **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.
- **Report:** Any report to OEI of information that could constitute a potential violation of this Policy.
- **Respondent:** An individual alleged to have engaged in Prohibited Conduct pursuant to this Policy.
- **Silent Advisor:** In cases involving allegations of sexual misconduct, or as otherwise specifically allowed in this Policy, a party may choose to have another individual accompany them to meetings with the investigator(s), or to a hearing. The advisor's role is limited to quietly conferring with the party through written correspondence or whisper, and the advisor may not address any other participant or the hearing panel. An attorney may serve as a silent advisor.
- **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.

Responsibilities

The Office of Equity and Inclusion and/or the Title IX Coordinator is responsible for administering this policy.

Violations

The University will act on any complaint or notice of violation of this policy that is received by the OEI Title IX Coordinator or any employee, including faculty, staff, and residence assistants. It is the University's decision whether or not to initiate an investigation into any report of a possible violation of this policy.

Interpreting Authority

Director of the Office of Equity and Inclusion and/or Title IX Coordinator.

Statutory or Regulatory References

Executive Order (EO) 11246
 The Vietnam Era Veterans' Readjustment Assistance Act (VEVRA)
 Pregnancy Discrimination Act of 1978
 Title IX, of the Education Amendments of 1972
 Immigration Reform and Control Act of 1990 (IRCA)
 Title VII of the Civil Rights Act of 1964
 Title IV of the Civil Rights Act of 1964
 Title VI of the Civil Rights Act of 1964
 The Civil Rights Act of 1991 (CRA)
 Equal Pay Act of 1963
 Age Discrimination in Employment Act of 1967 (ADEA)
 Title I of the Americans with Disabilities Act (ADA) of 1990
 ADA Amendments Act of 2008 (ADAAA)
 Rehabilitation Act of 1973
 Kentucky Civil Rights Act (KRS 344)
 Genetic Information Nondiscrimination Act of 2008
 Department of Education, Office for Civil Rights Dear Colleague Letter concerning sexual violence dated April 4, 2011
 Department of Education, Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence dated April 24, 2014
 The Family Medical Leave Act of 1993
 Any and all regulations pertaining to the above referenced acts found in the Code of Federal Regulations and/or the Kentucky Administrative Regulations.

Policy Adoption Review and Approval

Policy Revision

<u>Date</u>	<u>Entity</u>	<u>Action</u>
June 18, 2019	Board of Regents	Adopted
May 21, 2018	Director, Policy and Legal Operations	Editorial Change
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