

Administrative Regulation 6:2 (Interim)

Policy and Procedures for Addressing and Resolving Allegations of Sexual Harassment Under Title IX and Other Forms of Sexual Misconduct

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I. Introduction

This *Administrative Regulation* establishes the University's policies and procedures for addressing and resolving allegations of Sexual Harassment under Title IX of the Education Amendments of 1972. This regulation also applies to acts of retaliation as defined in the Title IX implementing regulations and types of Sexual Misconduct not contemplated by the Title IX implementing regulations. This regulation does not include Sexual Harassment or other forms of sex or gender-based discrimination covered by Title VII or that fall within Administrative Regulation 6:1, *Policy on Discrimination and Harassment*.

The definition of Sexual Harassment under Title IX is codified in the U.S. Department of Education's Regulations implementing Title IX. Conduct that is Sexual Harassment under Title IX is not necessarily Sexual Harassment under Title VII or Kentucky law and vice versa.

The University's Title IX Coordinator and the Office of Institutional Equity and Equal Opportunity ("Institutional Equity") administer this regulation.

The Title IX Coordinator and Institutional Equity administer two (2) separate policies that address Sexual Misconduct and other forms of discrimination and harassment:

- *Administrative Regulation 6:1, “Policy on Discrimination and Harassment”*
- *Administrative Regulation 6:2, “Policy and Procedures for Addressing and Resolving Allegations of Sexual Harassment Under Title IX and other forms of Sexual Misconduct”*

Sexual Harassment and other forms of sex or gender based discrimination that fall outside of Title IX are prohibited by Administrative Regulation 6:1. Sexual Misconduct that falls outside of the definition of Title IX is prohibited by Administrative Regulation 6:2. The University’s Title IX Coordinator has discretion to determine appropriate charge for reported behavior, including which policy applies to reported behavior. Questions about which policy applies in a specific instance should be directed to the University’s Title IX Coordinator at (859) 257-8927.

II. Policy

The University of Kentucky is committed to providing a safe learning, living, and working environment for all members of the University community. Consistent with this commitment, the University prohibits Sexual Harassment under Title IX which includes quid pro quo sexual harassment, hostile environment sexual harassment, domestic violence, dating violence, sexual assault, stalking, and retaliation against any person for the good faith reporting of any of these forms of conduct or participation in any investigation or proceeding under this regulation (collectively, “Sexual Harassment”). This regulation also prohibits sexual assault, domestic violence, dating violence, stalking, and sexual exploitation (collectively “Sexual Misconduct”) that fall outside the definitions of those behaviors as defined as Sexual Harassment under Title IX. These forms of Sexual Harassment and Sexual Misconduct are unlawful, undermine the character and purpose of the University, and will not be tolerated.

Employees or students who violate this regulation may face disciplinary action up to and including termination or expulsion. The University will take prompt and equitable action to prevent Sexual Harassment and Sexual Misconduct, discipline anyone who violates this policy, prevent further prohibited behavior, and remedy the effect of any such conduct. The University conducts ongoing prevention, awareness, and training programs for faculty, staff, and students to achieve the goals of this regulation.

Every member of the University community is responsible for fostering an environment free from Sexual Harassment and Sexual Misconduct. All members of the University community are encouraged to take reasonable and prudent actions to prevent or stop any acts of Sexual Harassment and Sexual Misconduct. The University will support and assist community members who take such actions.

III. Scope

- A. This Administrative Regulation applies to all members of the University community, including faculty, staff, students, authorized volunteers, and registered student organizations.
- B. This regulation applies to any acts of Sexual Harassment or Sexual Misconduct that occur in the University’s Education Program or Activity.

Education Program or Activity means any on campus or any other University owned, leased, controlled, or operated location, event, or circumstance over which the University exercised substantial control over both Respondent and the context in which the alleged violation occurred. This includes any activity or location off University premises if the activity is authorized, initiated, sponsored, aided, or supervised by the University or a registered student organization.

- C. This regulation applies to any acts of Sexual Misconduct that occur on campus or any other University owned, leased, controlled, or operated location, event, or circumstance over which the University exercised substantial control over both Respondent and the context in which the alleged violation occurred. This includes any activity or location off University premises if the activity is authorized, initiated, sponsored, aided, or supervised by the University or a registered student organization.
- D. This regulation applies to any acts of Sexual Misconduct that occur outside the context of University employment or a University education program or sponsored activity whenever the conduct has continuing adverse effects on or creates a hostile environment for students, employees, or third parties while on property owned, leased, or controlled by the University, or in any University employment or education program or activity.
- E. University faculty, staff, and students may utilize services of the University's Violence Intervention and Prevention Center ("VIP") regardless of where the behavior they experienced occurred or regardless of the identity of the accused individual.

IV. Definitions

The following definitions are for purposes of this Administrative Regulation and are not intended to replace or summarize the United States Code, the Code of Federal Regulations, or the Kentucky Revised Statutes.

A. Affirmative Consent

"Affirmative Consent" means a voluntary expression of willingness, permission, or agreement to engage in specific sexual activity throughout a sexual encounter. It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other to engage in the sexual activity. Consent cannot be inferred from the absence of a "no"; consent, verbal or otherwise, must be obtained.

Consent cannot be granted by an individual who:

- (1) Is incapacitated as defined by this Regulation (See "Incapacitation" below);
- (2) Has been compelled by force or threat of force; or
- (3) Is coerced by supervisory or disciplinary authority;

B. Advisor

"Advisor" means an advocate or other individual who may attend both an investigative meeting or live hearing to provide advice, support, or guidance to either Respondent or Complainant. An Advisor may not interfere with the purpose of or create a disturbance in any investigative meeting. If an Advisor interferes with the purpose of an investigative meeting, disrupts, or obstructs a live hearing or investigative meeting, or fails to comply with procedures in a live hearing, they will be asked to leave the investigative meeting or live hearing.

An Advisor may be an attorney. Non-attorney Advisors may not directly participate in the hearing because participation in a live hearing may be regarded as the practice of law in Kentucky. An Advisor may not be a witness at the hearing of the matter for which they are serving as an advisor.

C. AR 6:2 Appeals Board

"AR 6:2 Appeals Board" means those presidential appointees who will consider appeals of the AR 6:2 Hearing Panel's determination as to whether a student, student organization, or employee has violated AR 6:2 or of recommended sanctions. Because the Code of Student Conduct ("the Code") explicitly

provides that the AR 6:2 procedures--not the Code's procedures--apply when a student is accused of violations AR 6:2, the AR 6:2 Appeals Board hears all appeals involving students who have been found responsible for violations of AR 6:2.

The Board consists of one faculty employee from each College and an equal number of staff employees from the University as a whole. In addition, the President will appoint one faculty employee, who has a law degree, to serve as Chair of the AR 6:2 Appeals Board.

The Dean of each College, in consultation with the Faculty Council (or equivalent) of the College, will forward two nominees to the President, and the President will appoint one member from each College to the Board. The Staff Senate will forward a number of nominees that is equal to the number of nominees forwarded by the Deans of the Colleges. The President will appoint half of the nominated staff members to the Board.

Board Members must receive annual training by the Title IX Coordinator, or their designee, on issues related to Sexual Harassment and Sexual Misconduct. Students are not permitted to serve.

D. AR 6:2 Appeals Panel

"AR 6:2 Appeals Panel" means a 3-person panel, including the Chair of the AR 6:2 Appeals Board and two other members of the Appeals Board selected by the Chair at the time of an Appeal, to resolve appeals of a Probable Cause Determination, an AR 6:2 Hearing Panel's determination as to whether a student, student organization, or employee has violated AR 6:2, or of recommended sanctions. The AR 6:2 Appeals Panel is the final decision-maker for all issues related to violations of AR 6.2 and recommended sanctions. For faculty members who are found to have violated A.R. 6:2, there may be additional procedures under Governing Regulation X and Kentucky statutes.

E. AR 6:2 Hearing Officer

"AR 6:2 Hearing Officer" means an attorney who is appointed by the President to preside over a hearing to resolve alleged violations of AR 6:2. The AR 6:2 Hearing Officer is responsible for maintaining order and determining the sequence of events during a hearing. The AR 6:2 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 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 pursuant to these procedures.

F. AR 6:2 Hearing Board

"AR 6:2 Hearing Board" means those presidential appointees who potentially will serve as members of the AR 6:2 Hearing Panel for a particular matter. The Board consists of two (2) faculty employees from each College and an equal number of staff members from the University as a whole. Students are not permitted to serve.

The Dean of each College, in consultation with the Faculty Council (or equivalent) of the College, will forward four nominees to the President and the President will appoint two members from each College to the Board. The Staff Senate will forward a number of nominees that is equal to the number of nominees forwarded by the Deans of the Colleges. The President will appoint half of the nominated staff members to the Pool.

Board Members must receive annual training by the Title IX Coordinator, or their designee, on issues related to Sexual Harassment and Sexual Misconduct.

G. AR 6:2 Hearing Panel

"AR 6:2 Hearing Panel" means a 3-person AR 6:2 Hearing Panel selected by the AR 6:2 Hearing Officer

from the AR 6:2 Hearing Board to resolve alleged violations of AR 6:2. The AR 6:2 Hearing Panel is the decision-maker with respect to issues of responsibility. If there is a finding of responsibility, the AR 6:2 Hearing Panel makes a recommendation concerning sanctions to the Provost (faculty), Associate Provost for Student and Academic Life (students) or Vice President for Human Resource (staff).

H. Attorney

“Attorney” means an individual who is licensed to practice law in the courts of the Commonwealth of Kentucky. An Attorney may attend an investigative meeting, but may not interfere with the investigative meeting. An Attorney representing a Complainant, a Respondent, or the University may actively participate in any live hearing that may occur as a result of an investigation pursuant to AR 6:2, but may not create a disturbance in any live hearing. An attorney who interferes with the purpose of an investigative meeting, disrupts, or obstructs a live hearing or investigative meeting, or fails to comply with procedures in a live hearing will be asked to leave the investigative meeting or live hearing.

If Respondent or Complainant does not have an Attorney to represent them at the Live Hearing, the University will provide, without fee or charge, an Attorney of the University’s choice to represent the Complainant or Respondent. Attorneys provided by the University will be selected in accordance with state procurement law and will be compensated at a fixed rate.

I. Campus Security Authority

“Campus Security Authority” (CSA) is broadly defined as an individual having responsibility for campus security or an official having significant responsibility for student and campus activities. For a specific listing of individuals designated as campus security authorities, see *Administrative Regulation 6:7.III.E, Policy on Disclosure of Campus Security and Crime Statistics*.

J. Complainant

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment or Sexual Misconduct. If Complainant is a minor or legally incompetent, the parents or guardians of Complainant may act on Complainant’s behalf. However, the individual who experienced the behavior, not the parents or guardians, is the Complainant.

K. Complicity

“Complicity” means any act taken with the purpose of aiding, facilitating, promoting, or encouraging the commission of an act of prohibited conduct by another person.

L. Dating Violence

“Dating Violence”, is a form of Sexual Harassment or Sexual Misconduct. The federal regulation uses the definition in 34 U.S.C. 12291(a) (10), which defines Dating Violence as violence committed by a person—

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) Where the existence of such a relationship is be determined based on a consideration of the following factors:
 - a. The length of the relationship.
 - b. The type of relationship.
 - c. The frequency of interaction between the persons involved in the relationship.

M. Domestic Violence

“Domestic Violence” is a form of Sexual Harassment or Sexual Misconduct. The federal regulation uses the definition in 34 U.S.C. 12291(a)(8), which defines Dating Violence as felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Kentucky, or by 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 Kentucky.

N. Employee

“Employee” means a faculty employee or staff employee, regardless of employee type (i.e., regular or temporary), as defined in *Human Resources Policy and Procedure #4.0: Employee Status*.

O. False Allegation

“False Allegation” means an allegation that was made in bad faith, e.g. an allegation that the person making knew to be untrue at the time it was made. The mere fact an investigation concluded there was no Probable Cause or that a hearing panel did not find the accused responsible does not mean the allegation was made in bad faith.

P. Force or Coercion

“Force or Coercion” means: (a) threats of serious physical, emotional, or psychological harm to or physical restraint against any person, (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person, or (c) threats of employment or academic repercussions for failing to engage in the requested behavior.

Q. Formal Complaint

“Formal Complaint” means a document filed in the Office of Institutional Equity by a Complainant or signed by the Title IX Coordinator, or their designee, alleging Sexual Harassment or Sexual Misconduct against a Respondent and requesting that the University investigate the allegation of Sexual Harassment or Sexual Misconduct. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University.

R. Incapacitated

“Incapacitated” means a person is impaired to such a level that they lack the physical and/or mental ability to make informed, rational judgments and/or cannot appraise or control their own conduct or make decisions with the degree of understanding they typically possess. A person may be impaired by an intoxicant, by mental illness or deficiency, or by physical illness or disability to the extent that personal decision-making is impossible. A person can be intoxicated without being incapacitated. A person who is below the statutory age of consent is incapacitated.

S. Making a False Statement

“Making a False Statement” means providing a statement or information that the person providing such statement or information knows to be false at the time it is provided.

T. Physical assault

“Physical Assault” means threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person. Physical assault will be addressed under this

policy if it involves sexual or gender-based harassment, dating or domestic violence, or is part of a course of conduct under the stalking definition.

U. Preponderance of the Evidence Standard

“Preponderance of the Evidence” means superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in a civil trial, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be.

V. Probable Cause

“Probable Cause” means a reasonable basis for believing that a violation of this policy may have occurred.

W. Registered Student Organization

“Registered Student Organization” (RSO) means a group of identifiable persons who have complied with the requirements for registration as determined by the Office of Student Organizations and Activities (“SOA”) in accordance with *AR 4:1, Registration of Student Organizations*, and includes groups that are seeking but have not yet been granted registered status.

X. Respondent

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment or Sexual Misconduct. A Respondent is a party to any live hearing that occurs because of an investigation pursuant to this regulation. If Respondent is a minor or legally incompetent, the parents or guardians of Respondent may act on Respondent’s behalf. However, the individual accused, not the parent or guardian, is the Respondent.

Y. Responsible Employee

“Responsible employee” means any University employee who:

- (1) Has the authority to act to redress Sexual Harassment;
- (2) Has been given the duty of reporting incidents of Sexual Harassment or any other misconduct to the Title IX Coordinator; or
- (3) Is an individual reasonably believed to have this authority or duty.

Z. Retaliation

“Retaliation” for Sexual Harassment under Title IX is defined at 34 CFR 106.7. Under that definition, neither the University nor any faculty member, employee, student, or authorized volunteer may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or the implementing regulations 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. Intimidation, threats, coercion, or discrimination, including charges against an individual for violations of university regulations and policies that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation. Retaliation does not include good faith actions lawfully pursued in response to a report of prohibited behavior.

Individuals who have made a complaint of Sexual Harassment or Sexual Misconduct under this policy are protected from behavior that infringes upon their ability to participate in any education program or activity

regardless of the outcome of any investigation or hearing. Individuals who encourage others to retaliate on their behalf may also be found responsible for Retaliation.

Any allegations of Retaliation should be reported to the Title IX Coordinator.

AA. Sanction

“Sanction” means any educational or disciplinary measure provided to encourage self-reflection regarding Respondent’s policy violation, to stop further inappropriate behavior, and to deter any subsequent violations. Sanctions should be appropriately connected to the violation.

BB. Sexual Assault

“Sexual Assault” is a form of Sexual Harassment or Sexual Misconduct. The federal regulation uses the definition 20 U.S.C. 1092(f)(6)(A)(v), which defines Sexual Assault as an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

A sex offense is any act directed against another person, without the consent of the second person, including instances where the second person is incapable of giving consent.

- (1) Sexual Assault: Rape is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of a second person, without the consent of the person being violated.
- (2) Sexual Assault: Fondling is defined as the touching of the private parts of another person without the consent of the second person, including instances where the second person is incapable of giving consent because of age or because of temporary or permanent mental incapacity.
- (3) Sexual Assault: Incest is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- (4) Sexual Assault: Statutory Rape is defined as sexual intercourse with a person who is under the statutory age of consent.

Sexual assault also includes all sex offenses as stated in Kentucky Revised Statutes 510.010 through 510.140.

CC. Sexual Harassment for Title IX Purposes

“Sexual Harassment” for Title IX Purposes “means conduct on the basis of sex that occurs in the University’s education program or education activity and satisfies one or more of the following:

- (1) An employee of the University conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct. This type of sexual harassment is also referred to as Quid Pro Quo.;
- (2) 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. This type of sexual harassment is also referred to as Hostile Environment.; or
- (3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a) (10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a) (30).

DD. Sexual Exploitation

“Sexual Exploitation” means taking non-consensual or abusive sexual advantage of another and includes situations in which the conduct does not fall within the definitions of Sexual Harassment or Sexual Assault, Dating Violence, Domestic Violence, or Stalking.

Examples of sexual exploitation include, but are not limited to the following:

- (1) Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give affirmative consent to sexual activity;
- (2) Allowing third parties to observe private sexual activity from a hidden location (e.g., a closet) or through electronic means (e.g., via Skype or live streaming of images);
- (3) Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person’s intimate parts (including genitalia, groin, breasts, or buttocks) in a place where that person would have a reasonable expectation of privacy);
- (4) Recording or photographing private sexual activity and/or a person’s intimate parts (including genitalia, groin, breasts, or buttocks) without consent;
- (5) Disseminating or posting images of private sexual activity and/or a person’s intimate parts (including genitalia, groin, breasts, or buttocks) without consent;
- (6) Human Trafficking; and
- (7) Knowingly exposing another person to a sexually transmitted infection or virus without the other’s knowledge.

EE. Sexual Misconduct

“Sexual Misconduct” includes Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Sexual Exploitation when that behavior does not meet the jurisdictional requirements to constitute Sexual Harassment under Title IX.

FF. Stalking

“Stalking” is a form of Sexual Harassment or Sexual Misconduct. The federal regulation uses the definition in 34 USC § 12291(a) (30), which is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for his or her safety or the safety of others; or
- (2) Suffer substantial emotional distress.

Course of conduct means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person’s property.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the person who alleges stalking.

GG. Student

“Student” means any person who is enrolled in courses at UK. Student status continues whether or not UK’s academic programs are in session. Student status includes those taking courses for credit or non-credit at UK, either full-time or part-time, while pursuing undergraduate, graduate, or professional studies.

Persons who are not enrolled at UK but who are participating in or attempting to participate in the education program or activity of the University are not students. However, such persons may serve as a Complainant or a Respondent.

Persons who withdraw after allegedly violating this Policy or who graduated after allegedly violating this Policy are not students but are still subject to discipline under this regulation.

HH. Supportive Measures

“Supportive Measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to Complainant or Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter Sexual Harassment and/or Sexual Misconduct.

Supportive measures may include but are not limited to the following:

- Counseling;
- Extensions of deadlines or other course-related adjustments;
- Modifications of work or class schedules;
- Campus safety or security 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 appropriate measures.

Any supportive measure provided to Complainant or Respondent will remain confidential to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The Title IX Coordinator, or their designee, is responsible for coordinating the effective implementation of supportive measures.

II. Title IX Coordinator

“Title IX Coordinator” means the University official responsible for investigating complaints of Sexual Harassment, resolving potential violations informally, and facilitating the hearing process.

JJ. University Counsel

“University Counsel” means the attorney(s) designated by the University to prosecute the alleged violation of this policy to the AR 6:2 Hearing Panel on behalf of the University. The University is a party to a live hearing occurring pursuant to this regulation. University Counsel does not have authority to request dismissal of a charged violation of this policy.

KK. University Official

“University Official” means any person employed or otherwise authorized by the University to perform assigned administrative or professional responsibilities.

V. Prohibited Acts

A. Every member of the University community is prohibited from:

- (1) Engaging in Sexual Harassment or Sexual Misconduct;
- (2) Being complicit in the commission of Sexual Harassment or Sexual Misconduct;
- (3) Retaliating in any manner against an individual who makes a complaint or participates in the investigation of a complaint of Sexual Harassment or Sexual Misconduct;
- (4) Interfering with procedures to investigate or redress a complaint of Sexual Harassment or Sexual Misconduct;
- (5) Making a false statement during the investigation or hearing of a complaint of Sexual Harassment or Sexual Misconduct; and
- (6) Making an intentionally false accusation of Sexual Harassment or Sexual Misconduct through the University’s procedures.

B. Any member of the University community who engages in one of these prohibited acts against any other member of the University community may be subject to corrective action and appropriate sanctions.

VI. Reporting Allegations and Filing Formal Complaints

A. A report of alleged misconduct is not the same as a Formal Complaint. A Formal Complaint means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment or Sexual Misconduct against a Respondent and requesting that the University investigate the allegation of Sexual Harassment or Sexual Misconduct. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in a education program or activity of the University.

B. Any person may report Sexual Harassment or Sexual Misconduct, regardless of whether the person reporting is the person alleged to be the victim of conduct that could constitute Sexual Harassment or Sexual Misconduct. A report may be made in person, by mail, by telephone or by electronic mail, using the contact information listed for the Title IX Coordinator or to the University of Kentucky Police Department (“UKPD”), the University Violence Intervention and Prevention Center, the Dean of Students Office, a Campus Security Authority, or by any other means that results in the 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 Title IX Coordinator.

Martha Alexander, Title IX Coordinator
13 Main Building
(859) 257-8927
Martha.alexander@uky.edu

C. An incident may be reported without filing a written complaint. Individuals who need assistance filing a report may contact the Office of Institutional Equity and Equal Opportunity at (859) 257-8927.

- D. Reports can be made electronically at: <https://www.uky.edu/eeo/discrimination-harassment>
- E. There is no statute of limitation for reporting behavior that may be a violation of this regulation.
- F. Any Responsible Employee who witnesses or is made aware of an incident of Sexual Harassment or Sexual Misconduct must report it to the Title IX Coordinator as soon as possible. Reports of behavior that constitute an immediate threat to the safety or security of the person experiencing the behavior or the campus community should be made to the UKPD. University employees who are not employed by one of the offices identified in section I, below, are Responsible Employees and are not confidential and are not permitted to hold a report in confidence. Failure of Responsible Employees to report an incident of Sexual Harassment or Sexual Misconduct in a timely manner may result in corrective action, up to and including termination of employment.
- G. Incidents that occur abroad may be reported to the University of Kentucky International Center or directly to the Title IX Coordinator.
- H. Individuals designated as Campus Security Authorities are required by law to report certain crimes, including alleged sex offenses, stalking, dating or domestic violence, and sexual exploitation, to the UKPD or Division of Crisis Management and Preparedness. These reports are made for statistical purposes, without the inclusion of identifying information of the parties. For reporting responsibilities of individuals designated as Campus Security Authorities, see *Administrative Regulation 6:7, Policy on Disclosure of Campus Security and Crime Statistics*.
- I. Confidential reporting is allowed to the University Violence Intervention and Prevention Center and the UK Counseling Center or Health Services when receiving counseling or medical services. The University encourages individuals who make a complaint of Sexual Harassment, or Sexual Misconduct, regardless of where the report is made, to also contact the University Violence Intervention and Prevention Center (<http://www.uky.edu/StudentAffairs/VIPCenter/>) for assistance in accessing and navigating services, resources, and referrals both on and off campus.
- J. Anonymous reports may be made to the UKPD; however, because police reports are public records under state law, UKPD cannot hold reports of Sexual Harassment or Sexual Misconduct in confidence.
- K. Anonymous reports may also be made to Institutional Equity. However, the University has limited ability to address anonymous reports.
- L. The University provides information on pursuing criminal or other legal action, health care, counseling, and other support services available to students, faculty, staff, and visitors who have made an allegation of Sexual Harassment or Sexual Misconduct.
- M. Reports made through the process described in this AR are separate from and are not dependent on the outcome of any criminal or civil process that may be occurring concurrently.
- N. The University resolves Formal Complaints of Sexual Harassment and Sexual Misconduct within a period that is reasonable given the nature of the complaint. The University will keep the Complainant and Respondent informed of the progress of the proceedings.
- O. Individuals who experience sexual assault, dating violence, or domestic violence are strongly encouraged to seek medical attention and be examined for physical injury, the presence of sexually transmitted diseases, or pregnancy as a result of rape.

NOTE: An individual who is considering making a criminal complaint or taking other legal action should seek medical care as soon as possible after the assault. It is important for the individual to not bathe, douche, or change clothing before the medical examination in order to avoid inadvertently removing important evidence. The kind of evidence that supports a legal case against an accused should be collected as soon as possible, at maximum within ninety-six (96)

hours of an assault.

Important University Contact Numbers:

UK Police	911 from a UK phone; or #UKPD from your cell phone
Violence Intervention and Prevention Center.....	(859) 257-3574
Office of the Dean of Students.....	(859) 257-3754
UK Counseling Center.....	(859) 257-8701
University Health Services.....	(859) 323-5823
UK HealthCare.....	(859) 257-1000

VII. Rights of the Complainant and Respondent

- A. The Complainant has the right to choose whether to file a Formal Complaint with the University.
- B. Complainant has the right to access supportive measures regardless of whether they file a Formal Complaint.
- C. In addition to pursuing administrative penalties and remedies, the Complainant maintains the right to pursue criminal or other legal action.
- D. Respondent has the right to be presumed innocent. It is the University’s responsibility to prove that Respondent engaged in Sexual Harassment or Sexual Misconduct.
- E. Both the Complainant and Respondent have the right:
 - (1) To have the University respect their rights provided by the United States and Kentucky Constitutions;
 - (2) To be treated with respect by University officials;
 - (3) To take advantage of campus support resources;
 - (4) To experience a safe living, educational, and work environment;
 - (5) To have up to two (2) Advisors, including attorneys, present during any investigation, pre-hearing meeting, or hearing;
 - (6) To have an attorney represent them at any hearing;
 - (7) To refuse to have an allegation resolved through conflict resolution procedures;
 - (8) To receive amnesty for certain student misconduct, such as alcohol or drug violations, that occurred ancillary to the incident;
 - (9) To be free from retaliation for reporting violations of this regulation or cooperating with an investigation;
 - (10) To have complaints heard in accordance with University procedures;
 - (11) To be informed in writing of the outcome/resolution of the complaint, any sanctions where permissible, and the rationale for the outcome where permissible;
 - (12) To have minimal interaction or contact with Respondent or Complainant; and
 - (13) To request supportive measures from the University to ensure minimal interaction or contact with Respondent or Complainant.

- F. The University will keep confidential to the greatest extent possible the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment or Sexual Misconduct, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness. The University may be required to disclose the identity of individuals when necessary to provide due process to the Respondent or to comply with federal or state law.

VIII. Corrective Actions and Disciplinary Procedures

- A. For students, faculty, and staff, the University will utilize the procedures outlined in the Appendix to address and resolve allegations of Sexual Harassment or Sexual Misconduct. The Title IX Coordinator, or designee, has the authority to determine whether allegations fall within the purview of AR 6:2 and appropriate charges.
- B. The recommended range of sanctions for students is in accordance with the Appendix and includes disciplinary probation, counseling assessment, social restrictions, social suspension, suspension, and expulsion. Additional sanctions also may be imposed when appropriate. Both the Complainant and Respondent will be informed of the outcome of the corrective action or disciplinary process.
- C. The recommended range of sanctions for faculty and staff is in accordance with the Appendix and includes suspension, counseling, or termination of employment. Additional sanctions also may be imposed when appropriate. Both the Complainant and Respondent will be informed of the outcome of the corrective action or disciplinary process.

IX. Education

Regular and ongoing education regarding the issues addressed in this regulation is available for all members of the University community. The VIP Center offers both online and interactive training sessions for students and conducts Green Dot bystander intervention training for faculty and staff. Training on Discrimination and Harassment, including Title IX, is offered by the Title IX Coordinator, or designee, on a regular basis for new employees, in the SuperVision curriculum, and for employees and any units upon request.

References and Related Materials

TITLE IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 - 1688

Department of Education, Title IX regulations, 34 C.F.R. § 106.1, et seq.

Higher Education Act of 1965, 485(f) (20 U.S.C. 1092(f)), Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act).

Violence Against Women Reauthorization Act of 2013, (Pub. Law 113-4)

Administrative Regulation 6:7, Policy on Disclosure of Campus Security and Crime Statistics

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For questions, contact: [Office of Legal Counsel](#)

UNIVERSITY OF KENTUCKY PROCEDURES FOR ADDRESSING AND RESOLVING ALLEGATIONS OF SEXUAL HARASSMENT UNDER TITLE IX AND OTHER FORMS OF SEXUAL MISCONDUCT

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I. INTRODUCTION

These procedures are applicable to allegations, investigations, and adjudication of cases involving *Administrative Regulation (AR) 6:2, Policy and Procedures for Addressing and Resolving Allegations of Sexual Harassment Under Title IX and Sexual Misconduct*.

These procedures apply in all cases involving violations of AR 6:2 regardless of whether Respondent is a faculty employee, staff employee, or student. Although a violation of AR 6:2 is a violation of the Student Code, the Student Code explicitly provides that these procedures—not the Code’s procedures—apply when a student is accused of violations of AR 6:2. Moreover, for staff employees, these procedures—not the Human Resources Policies and Procedures—apply when a staff member is accused of violations of AR 6:2. Although there are procedures for the termination of a faculty employee in Governing Regulation X, these procedures—not the termination procedures specified in Governing Regulation X—apply for the investigation and initial determination of a faculty employee’s responsibility for a violation of AR 6:2. If a faculty employee is found responsible for a violation of AR 6:2, the Provost may initiate termination procedures under Governing Regulation X.

II. DEFINITIONS

Definitions for these procedures are the same as the definitions in AR 6:2.

III. INITIATING A COMPLAINT

- A. *Distinction Between Report and Formal Complaint:* Making a report is not the same as filing a Formal Complaint. Individuals can make a report and receive supportive measures without filing a Formal Complaint.

- B. *Filing a Formal Complaint:* An individual may file a formal complaint by providing the Office of Institutional Equity and Equal Opportunity with a signed document containing the allegations they are making and requesting an investigation. A Formal Complaint can also be initiated with the signature of the Title IX Coordinator on a written complaint.

Any individual who does not have the ability to make a complaint in writing may contact Institutional Equity for assistance in filing a Formal Complaint.

- C. *Making a Report:* Any person may report Sexual Harassment, regardless of whether the person reporting is the person alleged to be the victim of conduct that could constitute Sexual Harassment, in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or to the University of Kentucky Police Department, the University Violence Intervention and Prevention Center, the Dean of Students Office, a Campus Security Authority, or by any other means that results in the 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 Title IX Coordinator. Reports can be made electronically at: <https://www.uky.edu/eeo/discrimination-harassment>.

- D. *Confidential Reporting:* Individuals may make a confidential complaint or report (where individuals receiving the complaint are not required to report incidents to the Title IX Coordinator) to the University Violence Intervention and Prevention Center (VIP Center), University Counseling Center (students only), or University Health Services (students only).

- E. *Anonymous Reporting:* Anonymous reports may be made to the University of Kentucky Police Department; however, the University of Kentucky Police Department cannot hold reports of sexual assault, stalking, dating violence, or domestic violence in confidence. In addition, certain individuals designated as Campus Security Authorities under AR 6:7 are required by law to report certain offences to the University of Kentucky Police Department or Division of Crisis Management and Preparedness. These reports are made for statistical purposes, without the inclusion of identifying information of the parties. (see AR 6:7, Policy on Disclosure of Campus Security and Crime Statistics).

Anonymous reports may also be made to Institutional Equity. However, the University has limited ability to respond to anonymous reports.

- F. *Dual Reporting:* Sexual Harassment and Sexual Misconduct are both violations of University policy, federal law, and, in some cases, state or criminal law. The University encourages Complainants to make reports to both local law enforcement agencies (Lexington Police Department, University of Kentucky Police Department, or other appropriate local law enforcement agencies) and a University official. The result of an external criminal investigation does not affect whether a violation of University policy has occurred. An external criminal investigation will not take the place of a University investigation, although a criminal investigation may supplement a University investigation. The University will not wait for the conclusion of a criminal investigation to begin conducting its own independent investigation, to take interim measures to protect the University or any member of the University community, or when necessary, initiate hearing procedures as outlined below.

IV. INVESTIGATION PROCESS

- A. *Notice:* Upon receipt of a Formal Complaint, the University will provide the following to both the Complainant and Respondent:

(1) Notice, which will include:

- a. Notice of these procedures;

- b. Notice of the allegations potentially constituting Sexual Harassment or Sexual Misconduct, including the following information if known at the time:
 - i. The identity of the parties involved in the incident;
 - ii. The conduct allegedly constituting Sexual Harassment or Sexual Misconduct; and
 - iii. The date and location of the alleged incident, if known.
- c. A statement that Respondent is presumed not responsible for the alleged conduct;
- d. A statement that a determination for responsibility is made at the conclusion of the process outlined in these procedures;
- e. A statement that the Parties may have two (2) Advisors of their choice, who may be an Attorney;
- f. A statement that the Parties may inspect and review evidence prior to a determination of responsibility being made;
- g. A statement that knowingly submitting false statements or knowingly submitting false information is grounds for University discipline;
- h. A statement that if, in the course of the investigation, the University discovers any additional allegations about Complainant or Respondent that are not included in the original notice, the University must provide notice of the additional allegations to the parties; and
- i. A statement that Respondents will have two (2) business days prior to their first investigative meeting to prepare a response to the allegations. Any such response may be, but is not required to be, submitted in writing.

B. The University will investigate all allegations in the Formal Complaint.

C. *Rights of Complainant and Respondent During the Investigation.* In addition to the rights enumerated above, in AR 6:2,VII (E), both Complainant and Respondent have the right to:

- (1) Present witnesses, including fact and expert witnesses and other inculpatory and exculpatory evidence;
- (2) Discuss the allegations under investigation or to gather and present relevant evidence;
- (3) Refuse to speak to the Equal Opportunity Investigator or to answer specific questions. Refusal to speak or answer questions will not result in the investigator drawing an inference of responsibility based on the refusal to answer questions; and
- (4) Be accompanied by two (2) Advisors, who may be an attorney, when meeting with the Equal Opportunity Investigator.

D. *Dismissal of a Formal Complaint:* Dismissal of a Formal Complaint for Sexual Harassment pursuant to Title IX does not preclude the University from bringing charges and taking disciplinary action against Respondent pursuant to *Administrative Regulation 6:2* for Sexual Misconduct or pursuant to *Administrative Regulation 6:1, Policy on Discrimination and Harassment*, or any other applicable University policy. If the University dismisses a Formal Complaint or any allegations in the Formal Complaint for any reason, the Complainant may appeal this decision to the AR 6:2 Appeals Board. If the Formal Complaint is not dismissed in its entirety, the dismissal is not subject to appeal until the adjudication process is complete.

- (1) The Title IX Coordinator, or their designee, must dismiss a formal complaint of Sexual Harassment if the conduct alleged in the Formal Complaint:

- a. Would not constitute Sexual Harassment even if proven;
 - b. Did not occur in the University's education program or activity; or
 - c. Did not occur against a person in the United States.
- (2) The Title IX Coordinator, or their designee, may dismiss the Formal Complaint or any allegations in the Formal Complaint if:
- a. At any time during the investigative process, Complainant notifies the Title IX Coordinator that Complainant would like to withdraw the Formal Complaint or any allegation in the Formal Complaint;
 - b. Respondent is no longer enrolled in or employed by the University;
 - c. Specific circumstances prevent the University from gathering evidence sufficient to make a determination as to Probable Cause; or
 - d. The information gathered in the investigation is not sufficient to make a determination of Probable Cause.
- E. The University may consolidate multiple Formal Complaints where the allegations of Sexual Harassment or Sexual Misconduct arise out of the same facts or circumstances.
- F. An Equal Opportunity Investigator will investigate to determine if there is Probable Cause to believe Respondent committed Sexual Harassment or Sexual Misconduct. The Equal Opportunity Investigator does not make a determination of Probable Cause.
- G. During the Investigative Process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests with the University.
- H. During the Investigative Process, the University may not access, consider, disclose or otherwise use a party's records that are made or maintained by an attorney, physician, psychiatrist, psychologist, or other recognized professional's or paraprofessional's capacity or assisting in that capacity, and which are made and maintained in connection with the provisions of treatment to the party, unless the University obtains that party's voluntary, written consent to do so.
- I. *Disclosure of Evidence and Response:* Prior to the completion of the Final Investigative Report, the University will provide each party and their advisors with an electronic or hard copy of the Preliminary Investigative Report, including all the evidence directly related to the allegations raised in the formal complaint. This includes evidence that the University does not intend to rely upon in reaching a determination regarding responsibility and inculpatory or exculpatory evidence. This does not include information related to supportive measures provided to individuals that do not impact the other party to a matter and does not include any investigative notes of the investigator. Within ten (10) calendar days of receiving the Preliminary Investigative Report, the Complainant and/or Respondent may submit a written Rebuttal or Supplementation to the Preliminary Investigative Report to the Equal Opportunity Investigator. The Equal Opportunity Investigator will consider the written responses before providing the Final Investigative Report and will include the written responses in the Final Investigative Report to the Title IX Coordinator, Respondent, and Complainant.
- J. *Final Investigative Report.* An Equal Opportunity Investigator will prepare a written Final Investigative Report with a recommendation to the Title IX Coordinator as to whether Probable Cause exists. The Final Investigative Report will contain any rebuttal or supplementation provided by Complainant and Respondent.

V. INTERIM REMEDIES DURING THE INVESTIGATION PROCESS

A. Emergency Suspension

- (1) The Title IX Coordinator, or their designee, may impose an emergency suspension on Respondent. The terms of the Emergency Suspension may remove Respondent from University premises or the University's education program or activity. Before doing so, the Title IX Coordinator, must: (1) undertake an individualized safety and risks analysis; (2) determine that an immediate threat to the physical health or safety of any individual arising from the allegations of Sexual Harassment or Sexual Misconduct justifies removal; and (3) provide Respondent with notice of the emergency suspension and opportunity to challenge the emergency suspension. The Title IX Coordinator's analysis, determinations, and notice must be in writing.
- (2) Because the emergency suspension provisions are mandated by federal regulation, the Emergency Suspension provisions preempt the University's governing and administrative regulations for the suspension of faculty and staff Respondents.
- (3) For faculty and staff Respondents, any Emergency Suspension will be Administrative Leave with pay. Employees who are classified as non-exempt employees will be paid for hours they are regularly scheduled to work including back pay.
- (4) The individual may appeal the Emergency Suspension to the Provost (faculty employee), Associate Provost for Student and Academic Life (students), or Vice President for Human Resources (staff employee) in writing within seven (7) calendar days of the notice of the Emergency Suspension. Any Emergency Suspension remains in effect during the appeal.
- (5) The Provost, Associate Provost for Student and Academic Life, or Vice President for Human Resources may reverse or modify the suspension. The decision of the Provost, Associate Provost for Student and Academic Life, or Vice President for Human Resources regarding the Emergency Suspension is final.
- (6) The possibility of an Emergency Suspension does not diminish Respondent's rights under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973.

B. Supportive Measures Available

Supportive Measures that may be initiated at any time and are not dependent on the outcome of the case include, but are not limited to:

- (1) Referral to on- or off-campus resources, such as the VIP Center or counseling;
- (2) Alteration of the housing (students) or workplace or workstation (employees) situation for the Complainant or Respondent;
- (3) Removing a student from residential facilities or removing an employee from the work setting or University premises (See Emergency Suspension);
- (4) Limitation on contact between parties (e.g. no-contact orders, no-trespass orders);
- (5) Referral to academic support services, such as tutoring and testing accommodations (students);
- (6) Adjustments to course schedules and academic deadlines (students) or work schedules (employees);
or
- (7) Other appropriate remedies based on each individual situation.

Supportive measures are not subject to appeal.

VI. DETERMINATION OF PROBABLE CAUSE

- A. After reviewing the Final Investigative Report, the Title IX Coordinator, or their designee, will determine whether there is Probable Cause to believe Respondent committed Sexual Harassment or Sexual Misconduct.
- B. If the Title IX Coordinator, or their designee, concludes there is not Probable Cause to believe Respondent committed Sexual Harassment or Sexual Misconduct, the Title IX Coordinator will state this conclusion in writing and notify both the Complainant and Respondent. The Complainant may appeal this decision to the AR 6:2 Appeals Board. If the Formal Complaint is not dismissed in its entirety, the dismissal is not subject to appeal until the adjudication process is complete.
- C. Alternatively, if the Title IX Coordinator, or their designee, concludes there is Probable Cause, then the Title IX Coordinator, will prepare a written statement of charges and present this written statement of charges to both the Complainant and Respondent.
- D. The written statement of charges will include a summary of the complaint, the alleged policy violation(s), the date and time of the pre-hearing meeting, and, if applicable, interim restrictions or supportive measures.

For allegations involving individuals, the statement of charges will be sent to Respondent's and Complainant's official University email addresses no less than five (5) calendar days prior to a scheduled pre-hearing meeting. Failure to read and comply with the statement of charges is not suitable grounds for an appeal.

For registered student organizations, the statement of charges will be mailed to the organization's representative, typically the organization's president, on file with the University. Failure to read and comply with the statement of charges is not suitable grounds for an appeal.

In scheduling a pre-hearing meeting, the Title IX Coordinator, or their designee, considers the availability of Respondent, Complainant, and their respective Advisors, based on Complainant and Respondent's class schedules, if students, and work schedules, if employees.

- E. *Pre-Hearing Meetings*: The Title IX Coordinator, or their designee, will meet with Respondent and Complainant separately to: (1) discuss the hearing process; and (2) attempt to resolve the matter without conducting a live hearing. These meetings will occur separately. With the exception of Advisors, pre-hearing meetings are closed meetings. If Respondent chooses to resolve the allegation during the meeting, the case will be closed, and the appropriate unit administrator(s) will be notified. If the allegation is not resolved during the meeting, the case will be referred to the AR 6:2 Hearing Officer for resolution by an AR 6:2 Hearing Panel.

VII. NOTICE OF HEARING AND ADMINISTRATIVE MEASURES

- A. For allegations involving individuals, Notices will be sent to Respondent's and Complainant's official University email addresses no less than five (5) calendar days prior to a scheduled pre-hearing meeting. Failure to read and comply with the Notice is not suitable grounds for an appeal.
- B. For registered student organizations, the Notice will be emailed to the organization's representative, typically the organization's president, on file with the University no less than five (5) calendar days prior

to a scheduled pre-hearing meeting. Failure to read and comply with the Notice is not suitable grounds for an appeal.

- C. The Title IX Coordinator, or their designee, schedules hearings. In scheduling a hearing, the Title IX Coordinator, or their designee, considers the availability of Respondent, Complainant, their respective Advisors, University Counsel, the AR 6:2 Hearing Officer, and the AR 6:2 Hearing Panel.

VIII. MEDIATION

If the Title IX Coordinator, or their designee, concludes there is Probable Cause, the Complainant or the Respondent may choose to pursue mediation in lieu of a formal resolution. If the Title IX Coordinator, or their designee, agrees to mediation, the Title IX Coordinator, or their designee, must obtain the voluntary written consent of both Complainant and Respondent.

The Title IX Coordinator, or their designee, may not pursue mediation in any situation where an employee is alleged to have committed Sexual Harassment or Sexual Misconduct against a student.

Under no circumstances will a Mediation Agreement involve the payment of money from the University to Respondent or Complainant or from Respondent to Complainant.

IX. LIVE HEARING PROCEDURES

- A. *Pre-hearing Deadlines:* All deadlines below are counted in calendar days. In the event a deadline falls on a weekend or University recognized holiday, the deadline is altered to the next business day.

- (1) No later than fourteen (14) days prior to a scheduled hearing, the parties will have access to all exculpatory and inculpatory evidence.
- (2) No later than ten (10) days prior to a scheduled hearing, University Counsel, Complainant, and Respondent must submit the following to the AR 6:2 Hearing Officer or their designee:
 - a. Challenges to any AR 6:2 Hearing Panel Member as described in IX(B)(c),
 - b. Any information they wish to present at the hearing,
 - c. The name(s) of their Advisor(s),
 - d. A preliminary list of questions or topics they wish to ask of the other party, and
 - e. A possible list of witnesses and the subject(s) on which they are expected to testify.

Except where allowed by the AR 6:2 Hearing Officer, the parties may not submit information for the hearing after this deadline. Upon the receipt of information from both parties, the AR 6:2 Hearing Officer will review the information submitted to eliminate any redundant, irrelevant, or prejudicial information.

- (3) At any time prior to the hearing, University Counsel, Complainant, or Respondent may request to postpone the hearing. The AR 6:2 Hearing Officer may accept or deny the request after considering the nature of the request and the incident at issue.
- (4) No later than three (3) days prior to the hearing, the Complainant, Respondent, University Counsel and the AR 6:2 Hearing Panel will receive a copy of the hearing file.
 - a. The hearing file for Complainant, Respondent, and University Counsel will include the following:
 - i. The Final Investigative Report,
 - ii. The Probable Cause determination,
 - iii. A list of witnesses,
 - iv. Preliminary questions submitted by parties, and
 - v. Any other related information.

- b. The hearing file for the AR 6:2 Hearing Panel will include the following:
 - i. Information about the parties,
 - ii. A list of possible witnesses,
 - iii. The charged policy violations,
 - iv. The date and location of the charged violation, and
 - v. Any other related information.

B. *Selection of AR 6:2 Hearing Panel*

- (1) *AR 6:2 Hearing Panel:* Three (3) randomly selected members of the AR 6:2 Hearing Board will determine responsibility for the charged policy violation. However, the AR 6:2 Hearing Officer will randomly select four (4) members from the AR 6:2 Hearing Board to hear each matter. At the conclusion of the presentation of evidence, one of the four (4) members will be excused as an alternate.
 - (2) *Conflicts of Interest:* Any member of the AR 6:2 Hearing Panel who has a conflict of interest must immediately recuse themselves by notifying the Hearing Officer and Title IX Coordinator, or their designee, of their conflict of interest and intent to recuse. Conflicts of interest include, but are not limited to, personal knowledge of the facts and circumstances of the allegations or having a family, personal, faculty/student, or professional relationship with either Complainant or Respondent.
 - (3) *Challenge to AR 6:2 Hearing Panel Members:* University Counsel, Complainant, or Respondent may challenge any Hearing Panel Member for Cause if there is a belief that a member of the AR 6:2 Hearing Panel has a conflict of interest. Challenges to the AR 6:2 Hearing Panel Members must be made no later than ten (10) calendar days prior to the hearing. The AR 6:2 Hearing Officer will determine if cause exists and will excuse any Panel Member where Cause exists. Under no circumstance will a AR 6:2 Hearing Panel Member be excluded for a reason that would violate the University's *Policy on Discrimination and Harassment*.
 - (4) *Selection of Additional Members:* If a AR 6:2 Hearing Panel Member recuses themselves or if the AR 6:2 Hearing Officer excuses a Panel Member for Cause, the AR 6:2 Hearing Officer will randomly select additional members from the AR 6:2 Hearing Board.
- C. *Access to Evidence:* Prior to the live hearing, Respondent, Complainant, and University Counsel will have access to all exculpatory and inculpatory evidence. Such access to evidence does not include review of the notes of the Equal Opportunity Investigator, the notes of the Title IX Coordinator, recordings of investigatory meetings, or information obtained that is not relevant to the charged allegations. Such access to evidence will be given at least fourteen (14) calendar days before the live hearing.
- D. *Investigative Report:* Unless Respondent, Complainant, and University Counsel stipulate, no portion of the Investigative Report, the Rebuttal, or any Supplementation is admissible in the hearing and, absent stipulation, the AR 6:2 Hearing Panel will not see the Final Investigative Report.
- E. *Location of Hearing:* The University may conduct the live hearing with all Parties physically present in the same geographic location or any Parties, witnesses, or other participants may appear virtually as long as all participants can simultaneously see and hear each other. For the duration of the global health crisis caused by COVID-19 and until the University is satisfied the health and safety of participants can be protected otherwise all live hearings will be conducted virtually.
- F. *Record of Hearing:* The University must create an audio or audiovisual recording or transcript of any live hearing. Copies of the recording or transcript must be made available upon request to University Counsel, Complainant, and Respondent.
- G. *Live Hearings:* Live hearings will be conducted by the AR 6:2 Hearing Officer according to the following procedures:

- (1) The AR 6:2 Hearing Officer is responsible for maintaining order and determining the sequence of events during a hearing. The AR 6:2 Hearing Officer may direct any person who fails to comply with procedures during the hearing or who disrupts or obstructs the hearing to leave the hearing. All questions of law, whether substantive, evidentiary, or procedural, will be addressed to and ruled upon by the AR 6:2 Hearing Officer. The AR 6:2 Hearing Officer does not have authority to dismiss allegations made pursuant to AR 6:2.
- (2) The hearing will be closed to the public. Complainant, Respondent, their respective Advisor(s), and University Counsel are allowed to attend the entire portion of the hearing, excluding AR 6:2 Hearing Panel deliberations.
- (3) Witnesses other than Complainant and Respondent will be excluded from hearings, except for the period of their own testimony.
- (4) Given the nature of these incidents, and the impact on the overall University community, the University, through University Counsel, has the burden of proving that Respondent has violated University policy. Respondent is presumed not responsible for the alleged conduct. While Complainant plays an integral part of the process and the proof of the University's case, it is the responsibility of the University—through University Counsel—to prove by a Preponderance of the Evidence that Respondent committed Sexual Harassment or Sexual Misconduct. The Complainant has no responsibility other than to appear as a witness.
- (5) The Title IX Coordinator, or their designee, will arrange the attendance of witnesses who are members of the University community, if reasonably possible. The Respondent and University Counsel are responsible for arranging the attendance of witnesses who are not members of the University community.
- (6) The Title IX Coordinator, or their designee, in consultation with the AR 6:2 Hearing Officer, will create the live hearing file.
- (7) Complainant and Respondent have the right to be assisted by up to two (2) Advisor(s), including attorneys, of their choice. Attorneys who are representing a Complainant, a Respondent, or the University may actively participate in the hearing. Non-attorney Advisor(s) are not permitted to participate directly in any hearing because participation in a live hearing may be regarded as the practice of law in Kentucky. Non-attorney advisors may communicate privately with the person they support during the hearing.
- (8) If Respondent or Complainant does not have an Attorney to represent them at the live hearing, the University will provide, without fee or charge, an Attorney of the University's choice to represent the Party.
- (9) University Counsel, Complainant, and Respondent have the right to call relevant and necessary witnesses and to present evidence.
- (10) University Counsel, Complainant's Advisor, if an Attorney, and Respondent's Advisor, if an Attorney, may ask the Complainant, Respondent, and any other witnesses all relevant questions and follow-up questions, including questions challenging credibility.
- (11) University Counsel, Complainant's Advisor, if an Attorney, and Respondent's Advisor, if an Attorney, may conduct cross-examination of all parties and all witnesses directly, orally, and in real time. Neither the Complainant nor Respondent may conduct cross-examination personally. Only the Advisors who are attorneys may conduct cross-examination.
- (12) Only relevant cross-examination and other questions may be asked of a party or witness. Before Complainant, Respondent, or witness answers a question, the AR 6:2 Hearing Officer must first

determine whether the question is relevant and explain any decision to exclude a question as not relevant.

- (13) Complainant, Respondent, or any witness may refuse to appear and/or exercise their Fifth Amendment right against self-incrimination. The AR 6:2 Hearing Panel must not draw an inference about the determination regarding responsibility based solely on a Party or witnesses' absence from the live hearing or refusal to answer cross-examination or other questions.
- (14) If a Complainant, Respondent, or any witness testifies on direct examination but does not submit to cross-examination, the AR 6:2 Hearing Panel must not rely on any statement of that individual in reaching a determination regarding responsibility.
- (15) Unless a party explicitly waives the privilege in writing, the AR 6:2 Hearing Officer will not allow questions or evidence constituting or seeking the disclosure of information protected under a legally recognized privilege.
- (16) Questions and evidence about Complainant's sexual predisposition or prior sexual behavior are not relevant unless (1) such questions and evidence about Complainant's prior sexual behavior are offered to prove that someone other than Respondent committed the conduct alleged by Complainant, or (2) if the questions and evidence concern specific incidents of Complainant's prior sexual behavior with Respondent and offered to prove consent. This standard is mandated by federal regulations and preempts any contrary Kentucky law.
- (17) At the conclusion of the live hearing, the AR 6:2 Hearing Officer will instruct the AR 6:2 Hearing Panel on the Preponderance of the Evidence standard and any other matters that the AR 6:2 Hearing Officer deems necessary to the Hearing Panel's determination.
- (18) After the AR 6:2 Hearing Panel has reviewed the evidence presented at the hearing, the Hearing Panel will determine whether Respondent has committed Sexual Harassment or Sexual Misconduct. The AR 6:2 Hearing Panel's determination will be made based on the Preponderance of the Evidence standard.
- (19) If the AR 6:2 Hearing Panel determines that Respondent is responsible for the violation, the finding must be unanimous. If any member of the AR 6:2 Hearing Panel believes there is not a Preponderance of the Evidence for responsibility, then Respondent must be found not responsible.
- (20) When an AR 6:2 Hearing Panel determines Respondent is responsible for Sexual Harassment or Sexual Misconduct, the Panel will immediately convene a supplemental proceeding to determine a recommended sanction(s). During the supplemental proceeding, Respondent, University Counsel, and Complainant may submit relevant evidence or make relevant statements regarding the appropriateness of a specific sanction. The past disciplinary record of Respondent may only be supplied to the AR 6:2 Hearing Panel during the supplemental proceeding to consider sanctions.

The AR 6:2 Hearing Panel must adopt a written determination that includes:

- a. Identification of the allegations potentially constituting Sexual Harassment or Sexual Misconduct;
- b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications of the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- c. Findings of fact supporting the determination;
- d. Conclusions of law regarding the application of this Regulation;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- f. A statement describing the recommended sanction;
- g. A statement as to whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to Complainant; and

h. The University's provisions for appeal.

- (21) The AR 6:2 Hearing Panel's Determination of Responsibility and Recommendation of Sanction will be provided simultaneously to both Complainant and Respondent.
- (22) The sanctions will be ultimately determined and imposed by the Associate Provost for Student and Academic Life (for students), the Provost (for faculty), or the Vice President for Human Resources (for staff). The Associate Provost for Student and Academic Life (for students), the Provost (for faculty), or the Vice President for Human Resources (for staff) are not limited to sanctions recommended by the AR 6:2 Hearing Panel.
- (23) The Associate Provost for Student and Academic Life (for students), the Provost (for faculty), or the Vice President for Human Resources (for staff) do not have the authority to overturn or modify the AR 6:2 Hearing Panel's findings of responsibility. Only the AR 6:2 Appeals Board may overturn the AR 6:2 Hearing Panel's findings of responsibility.
- (24) Regardless of the Sanction imposed, the Associate Provost for Student and Academic Life (for students), the Provost (for faculty), or the Vice President for Human Resources (for staff) will provide a written statement describing the recommended sanction and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to Complainant. This written statement will be provided simultaneously to Complainant and Respondent and University Counsel.

X. RECOMMENDED SANCTIONS

The chart below outlines the recommended sanctions for specific acts of Sexual Harassment. Additional sanctions not specifically listed below may also be imposed when appropriate.

	Recommended Range of Sanctions (STUDENTS)	Recommended Range of Sanctions (EMPLOYEES)
Sexual Harassment: Quid Pro Quo	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Expulsion	Probation, Written Warning, Counseling Assessment, Suspension, Termination
Sexual Harassment: Hostile Environment	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Expulsion	Probation, Written Warning, Counseling Assessment, Suspension, Termination
Sexual Harassment: Sexual Assault	Suspension, Expulsion	Suspension, Termination
Sexual Harassment: Dating Violence or Domestic Violence	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Expulsion	Probation, Written Warning, Counseling Assessment, Suspension, Termination
Sexual Harassment: Stalking	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Expulsion	Probation, Written Warning, Counseling Assessment, Suspension, Termination

The chart below outlines the recommended sanctions for specific acts of Sexual Misconduct. Additional sanctions not specifically listed below may also be imposed when appropriate.

	Recommended Range of Sanctions (STUDENTS)	Recommended Range of Sanctions (EMPLOYEES)
Sexual Misconduct: Sexual Assault	Suspension, Expulsion	Suspension, Termination
Sexual Misconduct: Dating Violence or Domestic Violence	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Expulsion	Probation, Written Warning, Counseling Assessment, Suspension, Termination
Sexual Misconduct: Stalking	Suspension, Expulsion	Suspension, Termination
Sexual Misconduct: Sexual Exploitation	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Expulsion	Probation, Counseling Assessment, Suspension, Termination

XI. APPEALS TO THE AR 6:2 APPEALS BOARD

- A. *Jurisdiction:* The AR 6:2 Appeals Board has appellate jurisdiction over appeals related to Sexual Harassment and Sexual Misconduct. Because the Code of Student Conduct explicitly provides that these procedures—not the Code’s procedures—apply when a student is accused of Sexual Harassment or Sexual Misconduct, the AR 6:2 Appeals Board, not the University Appeals Board, will hear appeals of students who have been found responsible for Sexual Harassment or Sexual Misconduct.
- B. *Appellate Deadlines:* The following deadlines are applicable to all appeals. Dates are calculated in calendar days. In the event, a deadline falls on a weekend or University recognized holiday, the deadline falls on the next business day.
- (1) No later than fourteen (14) days after the AR 6:2 Hearing Panel’s written decision, Dismissal of a Formal Complaint, or the Title IX Coordinator’s finding that Probable Cause does not exist, a Notice of Appeal must be filed with the AR 6:2 Appeals Board Chair.
 - (2) Within fourteen (14) days of the filing of the Notice of Appeal, the party initiating the appeal must file their Opening Brief with the AR 6:2 Appeals Board Chair.
 - (3) Within fourteen (14) days of the filing of the Opening Brief, the party responding to the appeal must file a Response Brief with the AR 6:2 Appeals Board Chair.
 - (4) Within seven (7) days of the filing of the Response Brief, the party initiating the appeal may file a Reply Brief.
- C. *Decisions Subject to Appeal:* A Respondent, Complainant, or University Counsel may appeal the AR 6:2 Hearing Panel’s decision regarding the responsibility, the imposition of a particular sanction, the dismissal of allegations, or the finding of no Probable Cause for any allegation to the AR 6:2 Appeals Board on any ground identified below in XI (D).
- D. *Grounds for Appeal:* A Respondent, Complainant, or University Counsel may appeal on the following bases: (1) Dismissal of a Formal Complaint or allegation of a Formal Complaint; (2) Finding of no Probable Cause; (3) procedural irregularity that affected the outcome of the matter; (4) new evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; (5) the Title IX Coordinator, investigators, or AR 6:2 Hearing Panel

had a conflict of interest or bias for or against Complainant or Respondent that affected the outcome of the matter; (6) the factual findings were clearly erroneous; (7) the legal conclusions are incorrect; and/or (8) a party's constitutional rights were violated.

- E. *Composition of AR 6:2 Appeals Board:* The Chair of the AR 6:2 Appeals Board and two (2) members of the AR 6:2 Appeals Board randomly chosen by the Chair will consider the appeal. The appeal does not include a new hearing, but rather is a review of the original decision.
- F. *Conflicts of Interest:* Any member of the AR 6:2 Appeals Board who has a conflict of interest must immediately recuse themselves by notifying the Board Chair. Conflicts of interest include, but are not limited to, personal knowledge of the facts and circumstances of the allegations or having a family, personal, faculty/student, or professional relationship with either the Complainant or Respondent. If the Chair of the AR 6:2 Appeals Board recuses themselves, then the President will appoint a new Chair.
- G. *Challenge to AR 6:2 Appeals Board Members.* Respondent, University Counsel, or Complainant, may challenge any AR 6:2 Appeals Board member if there is a belief that a member of the AR 6:2 Appeals Board cannot render a fair and impartial result. The Chair of the AR 6:2 Appeals Board will determine if cause exists and will excuse any Panel Member where cause exists. Under no circumstance will an AR 6:2 Appeals Board Member be excluded for a reason that would violate the University's *Policy on Discrimination and Harassment*. If University Counsel, Complainant, or Respondent challenges the Chair of the AR 6:2 Appeals Board for cause, the President will determine if cause exists.
- H. *Appellate Procedures:* The following procedures apply to all appeals:
 - (1) An appeal is initiated by filing a Notice of Appeal with the Chair of the AR 6:2 Appeals Board. The Notice of Appeal is a document filed by the party initiating the appeal (Appellant) indicating which decision they wish to appeal. The AR 6:2 Appeals Board Chair will notify the party responding to the appeal (Appellee(s)) that an appeal has been initiated.
 - (2) The Appellant's Opening Brief must not exceed twenty-five (25) pages, double-spaced, with twelve-point type. Prior to filing the Opening Brief, Appellant and their advisors have the right to review the hearing file, including any recording of the hearing, or the investigative report, depending on the decision being appealed.
 - (3) The Appellees' Response Brief must not exceed twenty-five (25) pages, double-spaced, with twelve-point type. The Appellees and their advisors have the right to review the hearing file, including any recording of the hearing, or the investigative report, depending on the decision being appealed.
 - (4) The Appellant's Reply Brief must not exceed ten (10) pages, double-spaced.
 - (5) Upon request of any party, the Chair of the AR 6:2 Appeals Board has the discretion to extend deadlines or expand page limits.
 - (6) After receipt of all Briefs, the AR 6:2 Appeals Board will begin its review of the briefs and the record.
- I. *Appeal Record:* In considering an appeal, the AR 6:2 Appeals Board will conduct a review of the entire record, including but not limited to:
 - (1) Notice of Dismissal;
 - (2) The Final Investigative Report;
 - (3) Probable Cause Determination;
 - (4) The hearing file that is given to the parties prior to the hearing;

- (5) Any pre-hearing rulings from the AR 6:2 Hearing Officer;
 - (6) The written recommendations of the AR 6:2 Hearing Panel;
 - (7) The recording or transcript of the live hearing;
 - (8) Any other materials admitted into evidence by the AR 6:2 Hearing Panel; and
 - (9) The Opening, Response, and Reply Briefs.
- J. *AR 6:2 Appeals Board Decision*: Upon review of all information applicable to the appeal, the AR 6:2 Appeals Board has the authority to do one of the following:
- (1) Reverse the dismissal and remand for further proceedings;
 - (2) Uphold the Probable Cause Determination;
 - (3) Reverse the Probable Cause Determination and remand for a hearing by the AR 6:2 Hearing Panel;
 - (4) Uphold the findings and recommendations made by the AR 6:2 Hearing Panel;
 - (5) Modify the recommended sanction(s); however, the AR 6:2 Appeals Board may not increase a penalty;
or
 - (6) Remand the case back to a AR 6:2 Hearing Panel for a new Hearing.
- K. *AR 6:2 Appeals Board Decision*: The AR 6:2 Appeals Board Chair will simultaneously communicate the outcome in writing to the involved parties and the Title IX Coordinator.
- (1) For students, the decision of the AR 6:2 Appeals Board is final and binding upon all involved.
 - (2) For employees, the decision of the AR 6:2 Appeals Board may be appealed pursuant to applicable law (KRS 164.230) and/or University regulations *GR I.F (faculty and staff)* and *GR X.B.1.f (faculty)*.

XII. AMENDMENT OF THESE PROCEDURES

The President will consult with the General Counsel, Title IX Coordinator, faculty, students, and staff before making amendments to these procedures. When changes in the law, court decisions, or federal or state regulations require immediate amendment of these procedures, the President may amend these procedures as necessary, with consultation occurring soon after. All substantive amendments will be reported to the Board of Trustees.