

## Policies

### Policy Prohibiting Discrimination, Harassment, and Sexual Harassment, and Procedure for Reviewing Complaints

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#### Chapter 3010

Issued October 28, 1991, revised April 2, 2003, September 9, 2014, August 31, 2017 and August 14, 2020

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#### **.010 Policy Prohibiting Discrimination, Harassment, Sexual Harassment, and Procedure for Reviewing Complaints**

##### **A. Prohibited Conduct**

Kansas State University is committed to maintaining academic, housing, and work environments that are free of discrimination, harassment, and sexual harassment. Discrimination based on race, color, ethnicity, national origin, sex, sexual orientation, gender identity, religion, age, ancestry, disability, genetic information, military status, or veteran status is prohibited. Retaliation against a person for reporting or objecting to discrimination or harassment or for participating in an investigation or other proceeding is a violation of this Policy, whether or not discrimination or harassment occurred. This Policy is not intended for, and will not be used to, infringe on academic freedom or to censor or punish students, faculty, employees, or staff who exercise their legitimate First Amendment rights.

This Policy sets forth how the Kansas State University will proceed once it is made aware of possible prohibited conduct in keeping with the University's institutional values. This Policy also complies with the University's obligations under Title IX of the Education Amendments of 1972 (Title IX)(As amended May 6, 2020 and implemented August 14, 2020) which prohibits discrimination on the basis of sex in the University's programs or activities; relevant sections of the Violence Against Women Reauthorization Act; Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex in employment; and other applicable law.

## **B. Jurisdiction**

This Policy covers discrimination, harassment, sexual harassment, and retaliation occurring on campus, or otherwise within the context of University education programs and activities, whether those are on campus or off campus. It applies to persons who are on campus or who otherwise participate in or attempt to participate in the University education programs and activities (as further defined herein), such as employees, students, applicants for employment or admission, contractors, vendors, visitors, and guests. Conduct that occurs off campus and outside the context of the University's education programs and activities is covered by this Policy only to the extent such conduct has a nexus to discrimination, harassment, sexual harassment, or retaliation that is alleged to have occurred on-campus or in the context of the University's education programs and activities.

In Title IX Sexual Harassment cases (as described in this Policy), complainants must be participating in or attempting to participate in the University's education programs and activities at the time the formal, written complaint is submitted.

For purposes of this policy, the University's education programs and activities are defined as the operations of the University, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the University. It also includes off-campus locations, events, or circumstances over which the University exercises substantial control over the alleged perpetrator and the context in which the misconduct occurs.

All reports of conduct prohibited by this Policy should be submitted as soon as practicable to the Office of Institutional Equity (OIE). A delay in submitting a report could decrease the availability of supporting evidence, and the reason for a delay may be reviewed during the investigation and decision-making phases of the process.

## **C. Responsibilities of Persons Subject to the Policy – Reporting and Cooperation**

Supervisors (within their area of supervision) and administrators must make reports of possible violations of this Policy to OIE as soon as practicable upon notification (including by email if after regular business hours), must keep reports confidential, and must protect the privacy of all parties involved in a report. Failure to do so is a violation of this Policy. Employees who have information relevant to a report that they are not a party to may be required to provide that information in connection with the processes under this Policy.

All parties to matters covered by this Policy are encouraged to cooperate fully in administrative reviews, investigations, and, in Title IX Sexual Harassment cases, grievance hearings, and to provide information, including official personnel or student files and records, and other materials that OIE and/or the ART deems necessary to complete a thorough review of complaints. If an individual declines to cooperate, the University will proceed under this Policy based on the information available to it and, when appropriate, may issue sanctions under the Policy.

Parties are prohibited from any conduct that interferes with or could be seen as interfering with the processes under this Policy. This includes, but is not limited to, coercing or bribing witnesses or tampering with evidence.

Any person who knowingly files a false report or complaint, who knowingly provides false or misleading information, or who violates the confidentiality provisions of this Policy, is subject to disciplinary action. No action will be taken against an individual who makes a good faith report or complaint, even if the allegations are not substantiated.

Vendors on-campus or for University programs or activities must comply with this Policy. Depending on the circumstances, vendors – with the approval of OIE – may conduct investigations of their own employees and/or participate in determinations regarding alleged violations of this Policy. Prior to, during, and after such an investigation, the vendor will provide information as requested by OIE. OIE may require a vendor to include an OIE staff member as part of an investigation if OIE believes participation is necessary to ensure that the University's interests under this Policy are appropriately addressed.

## **D. Confidentiality**

The University endeavors to keep reports and other information obtained through this Chapter 3010 process confidential to the extent possible. To protect the privacy of the parties and the integrity of the process, parties, witnesses, and any others involved are encouraged to limit their discussion of the matter except as necessary for a party to gather or present evidence relevant to the matter or otherwise seek resources. Employees who are witnesses to misconduct shall not disclose information about the matter or their involvement in the case to anyone who does not have a need to know in connection with the Policy process.

A party or witness may be questioned about any conversations they have about the matter, and those conversations may be considered as evidence in the case, except to the extent they are protected under a legally recognized privilege.

Reports and other information may be disclosed to state or federal anti-discrimination agencies for investigations or audits, and during litigation.

## **E. Potential Sanctions, Remedial Actions, and Changes to Situations**

Persons who violate this Policy are subject to sanctions. Sanctions are determined on a case-by-case basis. They may include, among other appropriate sanctions, "no contact" orders, warnings, probation, educational and/or training requirements, notations on transcripts, exclusion from the campus, dismissal from employment, suspension or expulsion from the University, and any combination of the same.

Remedial actions may be taken to address the effects of a violation of this Policy. Examples of remedial actions include, but are not limited to, reevaluation of a grade, an evaluation completed by someone other than the respondent, reconsideration of an application for employment, placement in a position, back pay and lost benefits, withdrawal of a disciplinary action, alteration of class schedule, or a change of housing.

With respect to alleged Title IX Sexual Harassment, the University offers to complainants and respondents reasonable and available changes (i.e. supportive measures) to academic, living, transportation, and working situations if requested, regardless of whether formal, written complaint is made to the university, a criminal complaint is made to police or whether the report otherwise falls outside this Policy's jurisdiction. The Title IX Coordinator is responsible for coordinating the implementation of supportive measures in cases of Title IX Sexual Harassment. In other cases, parties should communicate with the Office of Institutional Equity, their supervisors, or the Office of Student Life regarding available resources. Certain changes may not be available unless a violation of this Policy is found.

## **F. Training and Education**

The University will provide training and educational programming to promote the awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking to incoming students and new employees, as well as ongoing campus-wide prevention and awareness campaigns regarding sexual violence and other anti-discrimination topics.

## **G. Exclusivity**

This Policy provides the University's exclusive means of review of allegations of discrimination, harassment (including sexual harassment and sexual violence), domestic and dating violence, retaliation, and stalking. The Policy shall supersede any other University policies or procedures that conflict with it; however, nothing herein prevents the University from taking appropriate risk management measures based on a person's conduct including, but not limited to, measures under [PPM 3015 \(/policies/ppm/3000/3015.html\)](#).

## **.020 Definitions**

### **A. Discrimination**

In this Policy, discrimination is treating an individual adversely in employment, housing, or academic decisions based on race, color, ethnicity, national origin, sex, sexual orientation, gender identity, religion, age, ancestry, disability, genetic information, military status, or veteran status without a legitimate, nondiscriminatory reason for the treatment, or maintaining seemingly neutral policies, practices, or requirements that have a disparate impact on employment, on-campus housing, or academic opportunities of members of the above-listed protected categories without a valid business or academic reason.

## **B. Harassment**

In cases of alleged conduct based on race, color, ethnicity, national origin, sex, sexual orientation, gender identity, religion, age, ancestry, disability, genetic information, military status, or veteran status, “harassment” is:

- A. In the work, housing, or other non-academic University environment, conduct toward a person or persons that has the purpose *or* effect of, OR in the University academic environment, conduct toward a person or persons that has the purpose *and* effect of:
  1. Creating an intimidating, hostile, or offensive environment for the person(s); or
  2. Unreasonably interfering with the work, on-campus housing, or other academic or non-academic University environment of the person(s), as applicable; AND
- B. That conduct is sufficiently severe or pervasive that it alters the terms, conditions, or privileges of a person’s employment, use of on-campus housing, academic opportunities or participation in university-sponsored activities.

Whether conduct is sufficient to constitute “harassment” is evaluated under the totality of the circumstances, including the frequency of the conduct, its severity, whether it is physically threatening or humiliating, or merely an offensive utterance. These factors are evaluated from both subjective and objective viewpoints, considering not only effect that conduct actually had on the person, but also the impact it would likely have had on a reasonable person in the same situation. The conduct must subjectively and objectively meet the definition to be “harassment” to be a violation of this Policy. Repeated incidents, even where each would not, on its own, constitute harassment, may collectively constitute harassment. Conduct meeting this definition of harassment is discrimination.

## **C. Sexual Harassment**

In this policy, the term “sexual harassment” has two definitions. The first definition reflects requirements from August 2020 Title IX regulations and will follow the investigation grievance process described further below; the other definition reflects requirements from other anti-discrimination laws (such as Title VII) and will follow the investigation and administrative review process described further below.

Conduct meeting either definition of “sexual harassment” is discrimination and is prohibited by this policy. Depending on the circumstances, some alleged conduct may be evaluated under both definitions of “sexual harassment.” Conduct that does not meet either definition of “sexual harassment” may also be additionally evaluated under the definition of “harassment” above if it involves conduct on a basis of another protected status.

### *Title IX Regulation (implemented August 14, 2020) Definition of “Sexual Harassment”*

In cases of alleged conduct based on sex, sexual orientation, or gender identity, for purposes of the Title IX process, “sexual harassment” is any conduct that occurs in the United States and that satisfies one or more of the following:

- A. A University employee conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct;
- B. 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 educational program or activity; or
- C. “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).

This definition is referred to throughout the Policy as “Title IX Sexual Harassment.” All allegations of conduct based on sex, sexual orientation, or gender identity, are first evaluated and processed under this definition. There is a presumption that a respondent is not responsible for alleged Title IX Sexual Harassment unless and until a determination regarding responsibility is final.

If the alleged conduct does not meet this definition, it also will be evaluated and processed under the definition immediately below.

*General Anti-Discrimination Definition of “Sexual Harassment” for Alleged Conduct Not Meeting the Definition Immediately Above*

For purposes of alleged conduct not meeting the definition of Title IX Sexual Harassment, “sexual harassment” is a type of harassment based on sex, sexual orientation, or gender identity that involves unwelcome sexual advances, requests for sexual favors, disparagement of members of one sex, or other conduct of a sexual nature when:

1. a. Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, Education, on-campus housing, or participation in a university-sponsored activity or program; or  
b. Submission to or rejection of such conduct is used as the basis for or as a factor in decisions affecting that individual’s employment, Education, on-campus housing, or participation in a university-sponsored activity or program; or  
c. Such conduct meets either “harassment” definition in B., above; and
2. The conduct is sufficiently severe, or pervasive that it effectively alters the terms, conditions, or privileges of the person’s employment, use of on-campus housing, academic opportunities, or participation in university-sponsored activities or programs.

For purposes of this definition, the conduct may occur in any University program or activity, regardless of whether that program or activity occurs inside or outside the United States. Conduct that would rise to the level of Title IX Sexual Harassment but for the fact that it occurred outside the United States will be evaluated under this definition.

Both types of “sexual harassment” may occur between any persons regardless of gender, and either as single or repeated incidents. Whether conduct is sufficient to constitute “sexual harassment” is evaluated under the totality of the circumstances, including the frequency of the conduct, its severity, whether it is physically threatening or humiliating, or merely an offensive utterance. These factors are evaluated from both subjective and objective viewpoints, considering not only the effect that the conduct actually had on the person, but also the impact it would likely have had on a reasonable person in the same situation. The conduct must subjectively and objectively meet these definitions to be “sexual harassment” under this Policy.

#### **D. Consent**

Permission or an agreement for something to happen. To be consent, the person must have the capacity to consent and the permission or agreement must be knowing and given without coercion. Consent will not necessarily be inferred from silence or passivity alone. Whether someone has given consent is based on the totality of the circumstances, including the context. Once consent to a sexual act has been given, consent can be withdrawn if communicated to the other person before or during that sexual act.

A person has capacity to consent to a sexual act if the person:

1. can understand the sexual nature of the proposed act, and
2. can understand that he or she has the right to refuse to participate in the act, and
3. possesses a rudimentary grasp of the possible results arising from participation in the act.

A person may be incapable of giving consent because of mental deficiency or disease, or because of the effect of any alcohol, narcotic, drug or other substance that renders the person incapacitated, when that condition is known by the offender or is reasonably apparent to the offender.

### **E. Retaliation**

In this Policy, retaliation is any materially adverse action taken against an individual because the individual has: (1) openly opposed a policy or practice the individual believed was a violation of this Policy or state or federal anti-discrimination law; (2) engaged in protected activity such as making a request for a reasonable accommodation; (3) participated in the investigation or resolution of a report or complaint under this Policy; or, (4) in the case of Title IX Sexual Harassment cases, refused to participate in any manner in the investigation or resolution of a report or complaint under this Policy. There must be a sufficient causal nexus between the protected activity and the adverse action.

### **F. Reports and Complaints**

A "report" under this Policy is a communication to OIE regarding a potential violation of this Policy suffered by another person. An "initial complaint" under this Policy is a communication submitted by the person who believes that they have directly suffered a violation of this Policy. A "formal, written complaint" is a signed, written document that includes the totality of allegations to be investigated by an ART. All reports, initial complaints, and formal, written complaints are processed under the Procedure for Reviewing Reports and Complaints.

### **G. Advisor**

In Title IX Sexual Harassment cases, an Advisor is a person chosen by a party or appointed by the University to accompany a party to meetings related to the Policy process, and to conduct cross-examination for the party at the hearing, if any. An Advisor may be an employee or non-employee of the University.

### **H. Investigator**

In all matters under this Policy, the Investigator is the person charged by the University with gathering facts about an alleged violation of this Policy, assessing the relevance of those facts, and preparing a report as described in the processes stated in this Policy. The Investigator serves as the principal individual in the Administrative Review Team (ART) for purposes of interviewing witnesses, gathering facts, and preparing the report.

### **I. Responsible Administrator**

In this Policy, the Responsible Administrator is typically the University official with authority to implement the recommendations of an Administrative Review Team ("ART"), or in the case of a Title IX Sexual Harassment grievance proceeding the University official with authority to implement the decisions and sanctions of the hearing officer. In cases where the respondent is a University employee, the responsible administrator is usually the direct supervisor of the respondent. In cases involving a student or graduate student as respondent, a representative of the Office of Student Life or the Graduate School, respectively, is the Responsible Administrator. In cases involving a student or graduate student as complainant, a representative of the Office of Student Life or the Graduate School may be on the ART as an additional Responsible Administrator, if requested by OIE. In cases where the respondent is a vendor, guest, or visitor, the official with authority over the applicable area or department where the conduct occurred will usually serve as the Responsible Administrator. During the investigation process, the Responsible Administrator sits with the Investigator during interviews, reviews evidence gathered by the Investigator, and reviews and provides input on the reports drafted by the Investigator.

### **J. Deciding Administrator (non-Title IX Sexual Harassment cases only)**

Only non-Title IX Sexual Harassment proceedings will have a Deciding Administrator. In those cases, the Deciding Administrator is always a University official with authority to implement the recommendations of an ART, and is usually the direct supervisor of a respondent who is an unclassified University employee. For University Support Staff (USS) employees who are respondents, the Deciding Administrator is the Director of Employee Relations and Engagement (DER). In cases involving an undergraduate student as respondent, the Senior Associate Dean and

Director of Student Life is the Deciding Administrator. In cases involving a graduate student as respondent, the Dean of the Graduate School is the Deciding Administrator. The Deciding Administrator will often serve as the Responsible Administrator for the same complaint. A Deciding Administrator does not serve as the Appeal Administrator regarding the same complaint, except in the case of USS employees as respondents. In cases where the respondent is a vendor, guest, or visitor, the official with authority over the applicable area or department where the conduct occurred is the Deciding Administrator.

### **K. Hearing Officer**

Only Title IX Sexual Harassment cases have a Hearing Officer. The Hearing Officer oversees the hearing. The Hearing Officer may ask questions of witnesses and will rule on whether questions are permissible. After the hearing, the Hearing Officer will issue a written determination of responsibility. The Hearing Officer is designated by the University, and may be an employee or non-employee of the University.

### **L. Appeal Administrator**

In non-Title IX Sexual Harassment proceedings, the Appeal Administrator is the direct supervisor of the Deciding Administrator, except in the case of USS employees as respondents. In non-Title IX proceedings, if the University President is the Deciding Administrator, then there is no appeal available.

In Title IX Sexual Harassment proceedings, the Vice President of Student Life or designee will review and decide on any appeal submitted to the Title IX Coordinator by a student, and the Provost or designee will review and decide on any other appeals submitted to the Title IX Coordinator, except in the case of USS employees as respondents. If the Provost is a respondent, then the President will be the Appeal Administrator. If the President is a respondent, then the Title IX Coordinator will designate an Appeal Administrator.

For all cases in which USS employees are respondents, the Peer Review Committee evaluates an appeal based upon the same standards required of Appeal Administrators, makes a written recommendation to the Director of Employee Relations (DER), and the DER makes the final decision.

## **.030 Procedure for Reviewing Reports and Complaints**

### **Step 1: The Initial Complaint or Report.**

Reports or initial complaints may be [submitted to OIE \(https://cm.maxient.com/reportingform.php?KansasStateUniv&layout\\_id=34\)](https://cm.maxient.com/reportingform.php?KansasStateUniv&layout_id=34).

Any person making a report or initial complaint under this Policy may either (a) submit it to the Office of Institutional Equity; or (b) submit it to the head of the department or unit in which the conduct occurred, but if that person's conduct is the reason for the report or initial complaint, then submit the report or initial complaint to the next higher level of supervision. Students and graduate students respectively may also submit their initial complaint to the Office of Student Life or to the Graduate School.

All reports or initial complaints received by administrators, and by supervisors for potential Policy violations within their area of supervision, *must* be submitted to OIE as soon as practicable in accordance with Section C, above; however, anyone may submit a report or initial complaint directly to OIE.

In cases of Title IX Sexual Harassment, any person making a report or initial complaint may also submit it directly to the Title IX Coordinator. If the report or initial complaint is submitted to the Office of Institutional Equity or a supervisor for potential Policy violations within their area of supervision, the individual who receives the report shall send the report to the Title IX Coordinator.

It is important for all persons to preserve any relevant evidence related to a report, initial complaint, or complaint.

The initial complaint or report may be oral or written. It should include as much information as possible regarding the alleged conduct, including but not limited to: the dates and locations of the conduct; the persons involved;

the effect the conduct has had on employment, learning or living environment or the complainant's ability to participate in university programs or activities; and the name and title of the person alleged to have engaged in the conduct.

In the event that a person discusses a sexual violence, domestic or dating violence, or stalking matter with a Center for Advocacy Response and Education ("CARE") staff member, the CARE staff member should consult with complainant, with the understanding that the CARE staff member may, but is not obligated to make a report to OIE or other appropriate University body unless there is an imminent risk of future harm. The CARE staff member will explain this Policy and that OIE is the point of contact for implementing this Policy to the person, encourage the person to make a report under the Policy, and ask whether the person would prefer keeping the information undisclosed by not referring it for processing by OIE. The University encourages reporting to OIE whenever the matter involves prohibited conduct under this Policy, so that it can process the matter under this Policy. Regardless of whether the information results in processing under this Policy, CARE will provide support and advocacy services to the extent feasible. Although this Policy protects confidentiality by limiting knowledge of complaints to those persons with a need to know, the University cannot ensure complete confidentiality.

If a person believes that criminal conduct has occurred, then the person should report that conduct to local law enforcement. CARE staff should also encourage the person to file a complaint with the police and will provide assistance in doing so if asked. The CARE staff member will also advise the person that he/she/they may decline to notify the police directly. The criminal justice system and this Policy are separate procedures, however, and complaints/reports must be made under both procedures if a complainant wants both processes to go forward. Persons may also request a protection from abuse order from a court under the Protection from Stalking Act, K.S.A. 60-31a01, *et seq.* KSU police will enforce such orders on campus.

## **Step 2: Initial Determination Regarding Jurisdiction and Validity**

All reports and initial complaints are processed by OIE. Upon receipt of a report or initial complaint, OIE makes an initial evaluation to determine if there is jurisdiction to investigate a violation of this Policy, and whether the alleged conduct, if true, would constitute a violation of this Policy, and determines the appropriate process.

If there is no jurisdiction or if the allegations would not constitute a violation of this Policy, even if true, then OIE will notify the complainant that the circumstances do not warrant further review under this Policy. That notice will explain OIE's decision and refer the complainant to the appropriate University office, if any. This determination by OIE is final and not subject to further review within the University, except in cases alleging Title IX Sexual Harassment (as defined in this Policy). In those cases, complainants may appeal under the procedures described in this Policy.

If there is jurisdiction and if the allegations would constitute a violation if true, then OIE will move forward to form an Administrative Review Team (ART) as described in Step 3.

Notwithstanding the foregoing, if additional facts are needed before making the determination regarding jurisdiction and/or whether the conduct, if true, would constitute a violation of this Policy, then OIE may form an ART, which would then perform the initial evaluation as described in Step 4.

## **Step 3: Formation of the Administrative Review Team**

If OIE determines that a report or initial complaint warrants a review after OIE's initial evaluation, OIE will inform the appropriate Responsible Administrator(s), unless that person's conduct is the reason for the initial complaint. Depending on the circumstances, OIE may ask the president, provost and senior vice president, a vice president, an associate vice president, or a dean to designate the Responsible Administrator to serve on the ART. The OIE staff member and the Responsible Administrator(s) become the ART for the complaint. OIE staff members receive regular training regarding this Policy and how to conduct investigations under it, and they provide training to the other member(s) of the ART.

## **Step 4: Administrative Review Team's Initial Evaluation of the Complaint**



The ART will interview the complainant as soon as possible so that the ART members hear the initial complaint and get sufficient information to decide how to process it. If the ART determines after initial evaluation that there is no jurisdiction or the alleged conduct, even if true, would not constitute a violation of this Policy, then the ART will notify the complainant that the initial complaint does not warrant further review under this Policy. That notice will explain the ART's decision and refer the complainant to the appropriate University office, if any. This determination by the ART is final and not subject to further review within the University, except in cases alleging Title IX Sexual Harassment (as defined in this Policy). In those cases, complainants may appeal under the procedures described in this Policy.

A complainant's failure or refusal to participate in the ART process may prevent the ART from investigating the alleged conduct.

### **Step 5: Formal, Written Complaint**

If the ART determines that the alleged conduct, if true, would constitute a violation of this Policy, the ART will obtain or produce a formal, written complaint and conduct a thorough, prompt, fair and impartial investigation, as set forth in the steps below. If the complainant does not prepare the formal, written complaint, then the ART will ask the complainant to read and, if necessary, to make corrections for accuracy and sign the formal, written complaint.

In Title IX Sexual Harassment cases, if the complainant does not sign the formal, written complaint, the Title IX Coordinator may sign it. The Title IX Coordinator may decide whether to sign a formal, written complaint not signed by a complainant based on alleged conduct, surrounding circumstances, and the potential for continuing harm on campus or in a University education program or activity. An unsigned complaint must be dismissed; a signed complaint is further reviewed and processed under this Policy.

In Title IX Sexual Harassment cases, once filed, the ART may elect to dismiss a formal complaint if: (1) the complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegation therein; (2) the respondent is no longer enrolled at or employed by the University; or (3) specific circumstances prevent the ART from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. In any of these circumstances, the parties will be notified in writing of the dismissal.

In non-Title IX Sexual Harassment cases, if the complainant does not sign the complaint, the ART processes the unsigned complaint based on the information available.

In all cases, if there are multiple complaints based on the same set of facts and involving the same parties, the ART may elect to consolidate the cases for purposes of the investigation and, in Title IX Sexual Harassment cases, the hearing.

### **Step 6: Investigation**

Once the formal, written complaint is received, the ART will inform both parties in writing of the investigation and allow a full opportunity to be heard. Both parties will be cautioned against making false statements, confidentiality and engaging in retaliation.

The ART will:

1. Meet with the respondent to provide a copy of the complaint, explain procedures, caution against retaliation, ask the respondent questions pertaining to the complaint, provide an opportunity for respondent to provide an oral or written response within ten (10) calendar days, and inform the respondent that the review will proceed with or without the response;
2. Receive, clarify and evaluate the respondent's response to the complaint, if a response is made; and
3. Interview any persons with specific knowledge of the alleged incident(s) and review relevant policies, procedures, files, documents, and records.

Complainants, respondents, and witnesses are generally not permitted to have an individual accompany them to interviews with the ART. If the investigation relates to alleged Title IX Sexual Harassment, then the complainant and respondent may be accompanied to any related meeting or proceeding by one advisor. In these cases, the parties may select their own advisor or, if they do not have their own advisor, one will be made available to them by the University at no cost. The complainant and respondent shall provide prior notice to OIE that an advisor will attend any meetings and whether their advisor is an attorney. During investigation meetings, advisors (including attorneys) are not permitted to participate during the interview, other than to speak to their advisee. An advisor who disrupts the process (as determined by the ART) may be excluded from the interview. An investigation shall not be delayed more than one time on account of an advisor.

### **Step 7(a): Title IX Sexual Harassment Cases – Review of Evidence and Hearing**

In Title IX Sexual Harassment cases, before the investigation closes, the ART will send the parties and their advisors an electronic copy of any evidence gathered during the investigation that is directly related to the allegations raised in the complaint. The parties will have equal opportunity to review the same evidence. After review of such evidence, each party will have 10 days to submit a written response to the evidence, which the ART will consider before finalizing the investigation report. If at any point before the close of the investigation the ART determines, based on a review of the information shared during the investigation, that the complaint, if true, would not constitute Title IX Sexual Harassment, then the complaint is reviewed in accordance with Step 7(b). In this circumstance, the parties will be notified in writing of the dismissal under Title IX Sexual Harassment.

If, at the close of the investigation, the ART determines, based on a review of the information shared during the investigation, that the matter includes claims of conduct that, if true, would fall under multiple definitions in this Policy, then the ART will determine whether the claims can be reasonably separated out for review and decision under the processes designated for those claims. If any of the claims include conduct that, if true, would constitute Title IX Sexual Harassment, and the ART determines that the claims are so intertwined such that they cannot be reasonably separated out, then all claims will proceed under the Review and Evidence and Hearing for Title IX Sexual Harassment.

After the parties have had an opportunity to review the evidence and submit their written responses, the ART will issue a written report that fairly summarizes the investigation. This report will be sent to the parties and their advisors at least 10 days prior to the scheduled hearing.

After the ART issues its report to the parties, OIE will schedule a live hearing. OIE will schedule hearings based on the availability of the complainant, respondent, witness(es), and advisors. Student availability for a hearing is determined based on academic class schedules. Employee availability will be coordinated based on responsibilities, including teaching schedules for faculty. Absent exigent circumstances, lack of availability based on upon personal matters or employment schedules are not considered in scheduling the hearing. If a party selects his or her own advisor, that individual should be someone whose schedule allows attendance at the scheduled date and time for the hearing without unreasonable delay.

The hearing may take place in person or by remote means at the discretion of the Office of Institutional Equity. If the hearing takes place in person, the complainant or respondent may request that any cross-examination of the parties occur with the parties in separate rooms but appearing by remote means. Hearings will be conducted in private. The complainant, respondent, and advisors will be allowed to attend the entire portion of the hearing at which information is presented. Admission of any other individual to the hearing is at the discretion of the Hearing Officer. All attendees are expected to adhere to reasonable rules of decorum as set out by the Hearing Officer. There will be a single recording of the hearing, which will be maintained by the University and will be made available for the parties to review following the conclusion of the hearing. The parties shall not separately record the hearing.

The University may set out procedures for the hearing that are in addition to those articulated directly in this Policy. Absent those procedures published by the University, the Hearing Officer maintains discretion about how to conduct the hearing so long as it meets the requirements set out in this section. During the hearing, the Hearing Officer may pose questions directly to any individual providing information in the hearing, subject to the

evidentiary standards provided by the hearing officer. Each party's advisor may also ask the other party and any witnesses relevant questions directly, orally, and in real time. The Hearing Officer will determine whether such questions are relevant.

During the hearing, questioning and evidence regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If a party or witness does not submit to questions at the live hearing, the Hearing Officer must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Hearing Officer will not draw an adverse inference based on an individual's decision not to submit to questions at the hearing.

Within 30 days after the hearing, the Hearing Officer shall issue a written determination of responsibility utilizing a preponderance of the evidence standard. The written determination shall include the following:

- Description of the allegations at issue;
- Description of the procedural steps taken throughout the case;
- Findings of fact supporting the determination;
- Conclusions regarding application of this Policy;
- A statement and rationale as to the determination of each allegation;
- A statement of any disciplinary sanctions and whether any remedies will be provided to the complainant; and

A description of the procedures and permissible grounds for appeal.

### **Step 7(b): Non-Title IX Sexual Harassment Cases – Determination and Written Report**

The ART will consider all of the information it gathered and decide whether or not the respondent violated this Policy, based on the preponderance of the evidence. Possible outcomes of the review are either: (1) a finding of no violation of this Policy; or (2) a finding of violation of this Policy. If the ART determines that the respondent did not violate this Policy, it will provide the complainant, the respondent, and the Deciding Administrator a written report that describes the review, makes findings of fact and any recommendations, and describes what the complainant must do to file an appeal. If the ART determines that the respondent violated this Policy, it will prepare a written report to the Deciding Administrator that describes the review, makes findings of fact, and provides recommendations for sanctions (and, if applicable, remedial actions, referrals, and follow-up). The complainant and the respondent shall be provided a copy of the written report at the same time as the Deciding Administrator.

The time required for reviews will vary; however, the goal is to complete reviews within 90 calendar days. But many factors, such as availability of witnesses and responsiveness of the parties or witnesses, can increase the time required for an investigation. Complainants and respondents may request a status update from OIE at any time.

If the ART determines that this Policy was violated, then the ART will make a recommendation regarding sanctions in its written report. The Deciding Administrator decides the sanctions and is responsible for ensuring compliance with the sanctions. Within ten (10) calendar days from the date the ART's written report was issued, the complainant and respondent may submit written comments to the Deciding Administrator regarding the ART report. Decisions on sanctions should be made in a timely fashion after the expiration of the ten (10) day comment period, and preferably within thirty (30) calendar days after receipt of the ART's report. Once sanctions are decided, they shall be implemented immediately, regardless of whether the complainant or respondent intends to appeal.

If the Deciding Administrator determines, based on the written submissions during the comment period and the ART's file, that the ART's Policy violation determination was clearly erroneous, as defined in Step 8, then the Deciding Administrator shall remand the matter back to the ART for further investigation and shall provide the

ART, complainant, and respondent with a specific written basis for the “clearly erroneous” determination. The process then returns to Step 6. A decision to remand to the ART is not subject to appeal.

Decisions should be made in writing, with copies to the complainant, respondent, OIE, and the Office of General Counsel. Decisions that impose sanctions should identify the appropriate Appeal Administrator and the ten-day period in which an appeal must be submitted.

### **Step 8(a): Title IX Sexual Harassment Cases – Appeal**

In Title IX Sexual Harassment cases, either party may appeal from:

1. A determination not to investigate a complaint for lack of jurisdiction or because the alleged conduct, if true, would not constitute Title IX Sexual Harassment under the definition in this Policy; or
2. The Hearing Officer’s written determination, in cases that proceed to a hearing under this Policy.

The appeal in writing must be submitted to the Title IX Coordinator no less than 10 days following the receipt of the applicable dismissal or determination. Upon receipt, the Title IX Coordinator shall provide the appeal to the appropriate Appeal Administrator. To succeed in an appeal, the appealing party must demonstrate, by a preponderance of the evidence, one of the following:

1. There was a procedural irregularity in the process that affected the outcome;
2. There is new evidence that was not reasonably available during the investigation and hearing that could have affected the outcome; or
3. A conflict of interest or bias existed with the Title IX Coordinator, the members of the ART, and/or the Hearing Officer, which affected the outcome.

The appeal must state every ground on which the appeal is based and include argument in support of the appeal. If a party submits an appeal, OIE will notify the non-appealing party. The non-appealing party may submit a written response to the appeal within 10 days of that notification.

On appeal, the Appeal Administrator does not conduct a new investigation. The Appeal Administrator may only decide whether the appealing party has demonstrated by a preponderance of the evidence that one of the above grounds for appeal has been satisfied. Within 30 days of both parties having the opportunity to submit written materials regarding the appeal to the Title IX Coordinator, the Appeal Administrator shall issue a written decision to both parties and their advisors that describes the appeal and announces a decision and rationale. The Appeal Administrator’s ruling is final and not subject to further review within the University.

### **Step 8(b): Non-Title IX Sexual Harassment Cases – Appeal**

#### *Appeal if No Violation Found*

If the ART determines that there was no violation of this Policy, then the complainant may submit an appeal to the Deciding Administrator. That appeal must be submitted in writing to the Deciding Administrator within ten (10) days from the date the ART’s written report was issued. The appeal must state every ground on which the appeal is based.

On appeal, the Deciding Administrator does not conduct a new investigation. The Deciding Administrator may only decide, based upon the written information presented and the ART’s file, whether the ART’s determination was “clearly erroneous” (i.e., plainly in error). The Deciding Administrator will defer to the ART for all credibility decisions (e.g., who is telling the truth). If an error(s) was made that would not have changed the determination (i.e., “harmless error”), then that error must be disregarded. In the event that a Deciding Administrator decides that an ART finding is clearly erroneous, the Deciding Administrator shall refer the matter back to the ART for further investigation and shall provide the ART with a specific written basis for the “clearly erroneous” determination.

If the Deciding Administrator determines that the ART’s findings are not clearly erroneous, then the Deciding Administrator’s ruling is final and not subject to further review within the University.

The Deciding Administrator should rule on an appeal in a timely fashion, preferably within thirty (30) days after receipt of the appeal. Rulings should be made in writing, with copies to the complainant, respondent, OIE, and the Office of General Counsel.

#### *Appeal of a Sanction if Violation Found*

If the Deciding Administrator imposes a sanction, then a written appeal by either the complainant or respondent may be submitted to the Appeal Administrator within ten (10) days from the date of the Deciding Administrator's written decision.

A respondent's appeal must be in writing and the appeal must state every ground on which the appeal is based. A complainant's appeal must be in writing, must state every ground on which the appeal is based, and may appeal only the severity of the sanction(s).

On appeal, the Appeal Administrator does not conduct a new investigation. The appeal may only decide, based upon the written information, whether the ART's violation determination and/or the Deciding Administrator's sanctions were "arbitrary and capricious." This means that there must be no reasonable basis, under circumstances presented, to uphold the sanctions imposed by the Deciding Administrator. The Appeal Administrator must defer to the ART for all credibility decisions (e.g., who is telling the truth). A Deciding Administrator who follows the ART's recommended sanction will be presumed not to have acted arbitrarily or capriciously, unless conclusively demonstrated otherwise.

If the Appeal Administrator determines that the ART's Policy violation determination was arbitrary and capricious, then the Appeal Administrator shall remand the matter back to the ART for further investigation and shall provide the ART with a specific written basis for the "arbitrary and capricious" determination. The process then returns to Step 6. A decision to remand to the ART is not subject to appeal.

If the Appeal Administrator determines only that the Deciding Administrator's sanctions are arbitrary and capricious, then the Appeal Administrator shall refer the matter back to the Deciding Administrator for further review and shall provide the Deciding Administrator with a specific written basis for the "arbitrary and capricious" determination. The process then returns to Step 9. A decision to remand to the Deciding Administrator is not subject to appeal.

The Appeal Administrator should rule on an appeal in a timely fashion, preferably within thirty (30) days after receipt of the appeal. Rulings should be made in writing, with copies to the complainant, respondent, OIE, and the Office of General Counsel. A ruling by the Appeal Administrator that affirms the Deciding Administrator's decision is not subject to further review within the University.

## **.040 Additional Resources**

At any point prior to or during the administrative review, OIE or the ART may refer either or both parties to the ombudspersons, Employee Assistance, Employee Relations, University Counseling Services, the Office of Student Life, Human Capital Services, the Center for Advocacy Response and Education (CARE), dean or department head, Mediation Services, or other persons deemed appropriate by the ART.

Information for students and employees about counseling, health, mental health, victim advocacy, legal assistance, and other services available for harassment, sexual harassment, and sexual violence victims both on-campus and in the community can be found at [OIE \(http://www.k-state.edu/oie/resolution/\)](http://www.k-state.edu/oie/resolution/) and [CARE \(http://www.k-state.edu/care/get-help/\)](http://www.k-state.edu/care/get-help/).

Reports of criminal activity should be directed to applicable law enforcement as soon as possible, including:

[Kansas State University Police Department \(https://www.k-state.edu/police/index.html\)](https://www.k-state.edu/police/index.html) <http://www.k-state.edu/police/>

[Riley County Police Department \(http://www.rileycountypolice.org/contact-us\)](http://www.rileycountypolice.org/contact-us)  
<http://www.rileycountypolice.org/contact-us>

Salina Police Department (<http://www.salina-ks.gov/Police-Department>) <http://www.salina-ks.gov/Police-Department>

Olathe Police Department (<http://www.olatheks.org/government/police>)  
<http://www.olatheks.org/government/police>

### **.050 Discretion in Application**

The University retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the University's interpretation or application differs from the interpretation of the parties.

Despite the University's reasonable efforts to anticipate all eventualities in drafting this Policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the University retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this Policy are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the University retains discretion to revise this Policy at any time, and for any reason. The University may apply policy revisions to an active case provided that doing so is not clearly unreasonable.

### **.060 Questions**

Please refer questions regarding this Policy to the Office of Institutional Equity, telephone 785-532-6220.