



# (INTERIM) KENTUCKY STATE UNIVERSITY POLICY AND PROCEDURES ON SEXUAL HARASSMENT AS DEFINED UNDER TITLE IX AND OTHER SEXUAL MISCONDUCT

## Part 1: Introduction

This Policy establishes Kentucky State University's ("KSU") policy and procedures for addressing and resolving allegations of Sexual Harassment as defined under Title IX of the Education Amendments of 1972 and other forms of Sexual Misconduct. This policy 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 Kentucky State University Policy and Procedures on Sexual Harassment as defined under the Equal Opportunity Employment and Nondiscrimination Policy.

The definition of Sexual Harassment under Title IX is codified in the U.S. Department of Education's Regulations implementing Title IX, 34 C.F.R. § 106.1, et seq. Conduct that is Sexual Harassment under Title IX is not necessarily Sexual Harassment under Title VII or Kentucky law and vice versa.

KSU's Title IX Coordinator and the Office of Human Resources ("OHR") administer this regulation. The Title IX Coordinator and Human Resources administer two (2) separate policies that address Sexual Misconduct and other forms of discrimination and harassment:

- Equal Opportunity Employment and Nondiscrimination Policy
- Kentucky State University Policy and Procedures on Sexual Harassment as defined under Title IX and other Sexual Misconduct.

Sexual Harassment and other forms of sex or gender based discrimination that fall outside of Title IX are prohibited by the Equal Opportunity Employment and Nondiscrimination Policy. Sexual Misconduct that falls outside of the definition of Title IX is prohibited by this policy. The University's Title IX Coordinator has discretion to determine appropriate charge for reported behavior, including which policy applies to the reported behavior. Questions about which policy applies in a specific instance should be directed to the University's Title IX Coordinator at (502) 597-6138.

## Part 2: Policy

Kentucky State University adheres to all federal, state, and local laws and regulations prohibiting discrimination in education and employment. KSU prohibits all forms of discrimination on the basis of sex, including Sexual Harassment and Sexual Misconduct as described in this policy. KSU is committed to providing a safe learning, living, and working environment for all members of the University community. Consistent with this commitment, KSU 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 policy (collectively, "Sexual Harassment"). Complicity in the commission of any act prohibited by this Policy or Retaliating against someone for the good faith reporting or other participation in this Policy is strictly prohibited. Additionally, KSU is committed to raising awareness of issues relating to Sexual Harassment and Sexual Misconduct and its prevention, providing training and continuing education for students, faculty, and staff.

Employees or students who violate this policy may face disciplinary action up to and including termination or expulsion. The University will take prompt and equitable action to prevent prohibited conduct, discipline anyone who violates this policy, stop further prohibited behavior, and remedy the effect of any such conduct.

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

Questions regarding Title IX or this policy should be directed to the Title IX Coordinator.

### **Part 3: Scope of Policy**

This policy applies to all of KSU's students, faculty, staff (part-time and full-time), vendors, contractors, campus visitors, authorized volunteers, registered student organizations, and members of the Board of Regents. This Policy applies on all University Property, and on all property at which KSU holds educational programs or activities.

- A. This policy applies to any acts of Sexual Harassment or Sexual Misconduct that occur in KSU's educational programs or activities. Educational program or activities is defined under this policy as 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 KSU premises if the activity is authorized, initiated, sponsored, aided, or supervised by the University or a registered student organization.
- B. This policy 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.
- C. This policy 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.

### **Part 4: Title IX Coordinator**

The Title IX Coordinator is charged with coordinating KSU's response to reports of Sexual Harassment and Sexual Misconduct under this Policy.

KSU's Title IX Coordinator can be located at the following:

Hannah Satram-Hale, J.D.  
Academic Services Building (ASB) – Room 537  
400 East Main Street  
Frankfort, KY 40601  
(502) 597-6138  
hannah.hale@kysu.edu

## Part 5: 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.

## Part 6: Filing a Report

Any member of the University community, including guests and visitors, may file a report at any time. Any person who believes this policy has been violated should contact the Title IX Office or the Title IX Coordinator. 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 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. Employees may also notify their supervisor. Students may also notify a staff member or faculty member. Any person may contact KSU Police at (502) 597-6878.

In all cases, the Office of Title IX will give consideration to the Complainant with respect to how the report will be pursued. However, the University reserves the right to investigate and pursue a resolution even when the affected person chooses not to initiate or participate in a formal process when such investigation and resolution are necessary to protect the community.

### A. False Complaints/Reports/Statements

Deliberately false and/or malicious accusations of Sexual Harassment (as opposed to complaints which, even if erroneous, are made in good faith) are just as serious an offense as Sexual Harassment, or Retaliation and will be subject to appropriate disciplinary action.

### B. Mandatory Reporting by University Employees

All KSU employees (with the exception of the Confidential Resources identified below) are considered "Responsible Employees." 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 within 72 hours. 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 Kentucky State University Police Department. University employees who are not employed by one of the offices identified in section C, below, are Responsible Employees who are not confidential resources and thus 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.

## **C. Confidential Resources**

If a Complainant would like the details of an incident kept confidential and not shared with the Title IX office, the Complainant may speak with the following individuals:

### **For Students:**

- KSU's Mental Health Counselor(s);
- Student Health Services;
- Campus Baptist Ministries or the Wesley Foundation; and
- Practicing physicians, whether independent contractors or employed by the University.

Campus counselors are available to help students free of charge and can be seen on an emergency basis during normal business hours. The University's Counseling Center and Student Health Services staff will submit anonymous statistical information for reporting purposes pursuant to the Clery Act unless they believe disclosing information to appropriate officials is necessary to protect their client or patient from harm, or if there is a report of a threat of violence to a minor. In such instances, they will provide non-confidential reports.

### **For Employees and Students:**

- Off-campus local rape crisis counselors;
- Off-campus mental health provider;
- Domestic violence resources;
- Off-campus local or state assistance agencies; and
- Off-campus members of the clergy.

If the Complainant is an employee, and he or she would like details of an incident or conduct to be kept confidential, he or she may seek assistance through the Employee Assistance Program or any off-campus local rape crisis counselor, mental health provider, domestic violence resources, local or state assistance agencies, or members of the clergy who will maintain confidentiality. Confidentiality may not be honored in cases of an immediate threat of danger or abuse of a minor.

## **D. Supportive Measures**

Upon receipt of a report or having actual knowledge of a potential violation of this policy, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of supportive measures and the steps to file a formal complaint if one was not already filed. Supportive measures are intended to restore and or preserve a parties' equal access to the University's educational program or activities. The Title IX Coordinator will consider the Complainant's decision of whether to implement supportive measures. However, even if the Complainant does not want to implement supportive measures, the Title IX Coordinator may deem supportive or other measures necessary if the safety or well-being of any member(s) of the University Community may be jeopardized by the on-campus presence of the Respondent. The Title IX Coordinator may also contact the Respondent to discuss the availability of supportive measures.

Supportive measures may include, but are not limited to:

- a. Referral to counseling and health services;
- b. Referral to the Employee Assistance Program;
- c. Education to the community;
- d. Alteration of the housing situation of Respondent (resident student or resident employee);

- e. Alteration of the housing situation of the Complainant (resident student or resident employee), if desired;
- f. Limitations of contact between the parties, up to and including issuance of a no contact order;
- g. Adjustments to academic deadlines and course schedules;
- h. Altering work arrangements for employees; and
- i. Other remedies appropriate to each individual situation.

The Office of Title IX will keep confidential any supportive measure provided to parties to the extent confidentiality does not impede the implementation of the supportive measures.

## **E. Formal Complaint**

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 an educational program or activity of the University.

A signed written complaint to the Title IX Coordinator is required to initiate the investigative process. A Complainant, or parent or guardian if a Complainant is a minor, may file a Formal Complaint to initiate the investigative process. A Complainant may receive supportive measures whether or not he or she files a Formal Complaint. The Office of Title IX will give consideration to the Complainant's decision with respect to filing a Formal Complaint. However, The Title IX Coordinator may sign a formal written complaint to initiate the investigative process if it is necessary to protect the University community. The University may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassment arise out of the same facts or circumstances.

The following are recommended, not required, elements of a Formal Complaint:

- Clear and concise description of the alleged incident(s) (e.g.: when, where, and what occurred);
- Any supporting documentation and evidence;
- The desired remedy sought;
- Name and known contact information for Respondent;
- Name and all contact information of the Complainant/reporting party.

## **F. Dismissal of a Formal Complaint - Mandatory and Discretionary**

Following receipt of a signed Formal Complaint, a preliminary determination will be made by the Title IX Coordinator determining whether the alleged violation falls within the purview of the Policy. 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 Sexual Misconduct under this policy or pursuant to Equal Opportunity Employment and Nondiscrimination Policy or any other applicable University policy.

The Title IX Coordinator or designee must dismiss a Formal Complaint of Sexual Harassment (in part or in full) if the conduct alleged in the Formal Complaint:

- Would not constitute Sexual Harassment even if proved;
- Did not occur in the University's education program or activity;
- or
- Did not occur against a person in the United States.

The Title IX Coordinator or designee, may dismiss the Formal Complaint (in part or in full) or any allegations in the Formal Complaint if:

- Complainant notifies the Title IX Coordinator, in writing, that he/she wishes to withdraw the Formal Complaint or any allegation in the Formal Complaint;
- Respondent is no longer enrolled in the University's educational program or activity or no longer employed by the University;
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination about the allegations; or
- Did not 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 parties and the context in which the alleged violation occurred.

If any allegations of the Formal Complaint are dismissed for any of the above reasons, The Office of Title IX will send prompt notice to both parties stating the reason the complaint was dismissed. The Complainant may appeal the dismissal of the Formal Complaint by submitting the written appeal to the Title IX Coordinator by close of business on the second business day following the date of the letter of dismissal. The appeal must state the reason the dismissal should be overturned. The other party will then be notified of the appeal and has two (2) business days to respond in writing to the Title IX Coordinator.

The Title IX Coordinator will forward the appeal to the Appellate Officer who will review the appeal and notify the parties of the determination.

## **G. Emergency Suspension of Students or Employees:**

Following a Formal Complaint, the University may remove a Respondent from the University on an emergency basis if the Title IX Coordinator believes the Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment (as defined in this policy), the Title IX Coordinator will: (1) Undertake an individualized safety and risk 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.

### **Emergency Suspension of Students:**

During an emergency suspension, a student may be denied access to University Housing and/or to the KSU campus, facilities, or events. As determined by the Title IX Coordinator in consultation with the Dean of Student Leadership, Conduct, and Health, this restriction includes classes and/or all other KSU activities or privileges for which the student might otherwise be eligible. At the discretion of the University, alternative coursework options may be pursued to ensure as minimal an impact as possible on the Respondent. Emergency suspension is enforced only until final disposition of the grievance process.

To appeal an emergency suspension, the student must provide a written appeal to the Vice President for Student Engagement and Campus Life within two (2) business days of the emergency removal. Upon receipt of the appeal, the Vice President for Student Engagement and Campus Life shall schedule an appeal meeting with the student. The student may present supporting evidence and reply to evidence provided by others. The student has the right to be accompanied by an advisor or advocate. The Vice President for Student Engagement and Campus Life will review all information and inform the student of the final decision in writing within three (3) business days of meeting.

## **Emergency Suspension of Employees:**

For faculty and staff Respondents, any Emergency Suspension will be administrative leave with pay. During administrative leave, an employee may be denied access to KSU's campus, facilities, or events. As determined by the Director of Human Resources, this restriction includes classes and/or all other University activities or privileges for which the employee might otherwise be eligible.

At the discretion of the Title IX Coordinator, or designee, and in cooperation with Human Resources, alternative work options may be implemented to minimize any negative impact on the responding employee and Complainant in lieu of administrative leave during the process.

## **Part 7: 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 an Advisor, who may be an attorney, 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.

## **Part 8: 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.

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.

Students found responsible for Retaliation may be subject to suspension or expulsion from KSU. Employees found responsible for Retaliation may be subject to suspension or termination from KSU.

## **Part 9: Standard of Proof**

Kentucky State University uses the Preponderance of the Evidence (also known as “more likely than not”) standard to decide if a violation occurred. 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.

## **Part 10: Investigation**

### **A. Following Receipt of a Complaint**

If the Title IX Coordinator determines that the complaint falls within the purview of this Policy, then the process as outlined in this policy will begin. Investigations may be reasonably delayed only for good cause. Regardless of the status or outcome of any criminal or civil proceeding, KSU, in its discretion or at the request of a Complainant, may proceed with an investigation under this Policy. KSU’s process is separate from and independent of the criminal justice process.

There is no fixed time frame under which a school must complete an investigation under this Policy. However, KSU will make every effort to resolve the complaint in a reasonably timely manner. Reasons for a delay in investigating and resolving a complaint will be detailed in the investigative report.

The Respondent is presumed not responsible of any alleged violation of this policy until a determination is made at the conclusion of the process outlined in this policy.

The University will promptly notify the Respondent that a formal complaint has been made against him/her. The University’s notice will contain:

- Notice of the grievance process, including the availability of informal and formal resolution options;
- Notice of the allegations against Respondent with details of the alleged policy violation(s), including, if known: (1) the identity of the parties involved in the incident, (2) the alleged conduct, and (3) the date and location;
- A statement that the Respondent is presumed not responsible for the alleged conduct
- A statement that a determination regarding responsibility is made at the conclusion of the process;
- A statement of the parties’ right to an advisor of their choice (who may be an attorney);
- A statement that the Respondent may inspect and review evidence prior to a determination of responsibility being made;



- A warning that knowingly providing false statements or submitting false information during the grievance process constitutes a violation of this policy and is subject to disciplinary action; and
- A proposed interview date, time, and location that allows the parties enough time to prepare a response prior to the interview.

## **B. Federal Timely Warning Obligations**

Parties reporting Sexual Harassment should be aware that pursuant to the Clery Act, KSU personnel must issue crime alerts for incidents reported to them that represent a serious or continuing threat to students or employees. Should KSU personnel determine that a crime alert is warranted, KSU will withhold a victim's name and other identifying information and maintain confidentiality to the extent allowed by law, while providing enough information for University Community Members to make safety decisions in light of the potential danger.

## **C. Drug and Alcohol Amnesty**

KSU will not pursue disciplinary action for improper use of alcohol or other drugs against a party reporting Sexual Harassment or against another student who shares information as either a Witness to or as a reporter of Sexual Harassment as long as the report is made in good faith. KSU may, however, refer the student to counseling services.

## **D. Resolution Options – Informal and Formal Processes**

### **a. Informal Resolution Process**

Informal Resolution is a process overseen by the Title IX Coordinator or designee in which the primary goal is to end Sexual Harassment, prevent its reoccurrence, and remedy any known impact on the KSU community. The Title IX Coordinator will determine if Informal Resolution is appropriate, based on the willingness of the parties, the information gathered during the investigation, and the nature of the alleged conduct. The University does not allow for Informal Resolution of certain alleged conduct or Sexual Harassment of a student or minor by an employee.

Sanctions are generally not pursued as a result of Informal Resolution, though the parties may agree to appropriate remedies. Anyone participating in the Informal Resolution process can stop that process at any time and request to continue through the Formal Resolution process. In addition, KSU reserves the right to change an Informal Resolution process to a Formal Resolution process if Informal Resolution efforts are not feasible or productive, or if sufficient information is available that suggests the need to do so.

### **b. Formal Resolution Process**

If the Informal Resolution process is either unsuccessful or inappropriate, or one or both parties declines resolution through an Informal Resolution process, the matter will proceed with an investigation through the Formal Resolution process.

All investigations will be thorough, reliable, and impartial. Investigations will include all applicable investigation techniques, including but not limited to interviewing all relevant parties and witnesses, obtaining and reviewing available information, and identifying sources of expert information, if necessary. During investigations, regular communication will occur between the Title IX Coordinator or designee and the Complainant and Respondent.

Both parties are:

- Permitted an equal opportunity to provide witnesses and other inculpatory or exculpatory evidence;
- Permitted to bring an advisor of their choice, who may be an attorney, during any stage of the investigatory and grievance process;

- Given equal opportunity to inspect and review any information obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence upon which the University does not intend to rely in reaching a decision;
- Given equal opportunity to respond to such evidence; and
- Given equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

### **c. Role of the Investigator and Investigative Report**

After receipt of a Formal Complaint, the Title IX Coordinator will assign a Title IX Investigator to investigate the complaint. While parties are free to communicate with the Title IX Coordinator, the Title IX Coordinator does not and cannot investigate the Formal Complaint. The Title IX Investigator serves as the primary point of contact for the parties and functions as an impartial evidence gatherer.

Both parties shall have equal opportunity to present witnesses and evidence, both inculpatory and exculpatory.

During the investigative process, the burden of proof and the burden of gathering evidence regarding responsibility of an alleged violation rests with the University. Following an investigation, the Title IX Investigator will draft an investigative report that documents information gathered during the process, which will be made available to both parties. The draft investigative report will include:

- The details of the alleged conduct;
- A list of persons interviewed for the investigation and a summary of their interviews;
- A list and summary of all evidence, inculpatory and exculpatory, gathered;
- Assessments of the evidence (e.g., indications of where evidence from the parties conflicted, where a witness statement corroborated a party's claims, etc.);
- A synthesized list summarizing all the undisputed evidence upon which the parties/witnesses are in agreement and a synthesized list summarizing all the evidence that remains contested between the parties/witnesses; and
- The University or the Investigator may not request any records or information protected by a legal privilege (attorney/client, doctor/patient) without the voluntary written consent of the party holding the privilege.

The Title IX Investigator's report will not make any findings of fact, determinations as to whether a violation of this policy occurred, or any recommendations for resolutions of the grievance process.

The University will prove either an electronic or hard copy of the draft report to the parties and their advisors, if any. The parties will have ten (10) days to review the draft report and evidence in order to provide a written response to the Title IX Investigator. After ten (10) days, responses to the draft investigative report will no longer be accepted. The Title IX Investigator will include all written responses in the final investigative report. The University will send either electronic or hard copies of the final investigative report to the parties, their advisors, and Decision Maker. The parties will receive a copy of the investigative report at least ten (10) days before the hearing.

## **Part 11: 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 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 Appellate Officer. 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 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 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 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 Decision Maker for a live hearing consistent with the procedures herein.

## **Part 12: General Hearing Procedures before the Decision Maker:**

Both parties will receive sufficient written notice of the date, time, location, participants, and purpose of any hearings, interviews, or meetings.

The hearing convenes following the investigation of a Formal Complaint. The Decision Maker will (1) objectively evaluate relevant evidence and determine if a violation of the Policy occurred and (2) administer sanctions and remedies as appropriate. For cases brought before the Decision Maker, the following procedures outline the process:

Both the parties and their advisors shall have at least ten (10) calendar days to review the investigative report and have access to inspect or review any evidence referenced in the report before the hearing convenes.

- Both the parties may choose to participate in a manner that does not require their presence in the same room as the other party(ies).
- No individual, including the Complainant, Respondent, or any witness, is required to attend or participate in the hearing. However, parties should be aware that the Decision Maker cannot consider any statements or evidence

(physical, documentary, or verbal) previously provided by a party/individual during the investigation who then chooses not to participate in the hearing and submit to cross-examination. Therefore, if a party participates in direct examination and then refuses to participate in cross examination the Decision Maker cannot rely on any statement of that individual in reaching a determination regarding responsibility. The Decision Maker will make a decision based only upon the information provided to them during the hearing. The Decision maker may not make inferences about determination because a party or witness did not participate in the hearing or cross-examination.

- 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.
- Both the parties are entitled to have present one advisor, and an attorney, present to .
- The Decision Maker is responsible for maintaining order and will direct any person who fails to comply with procedures during the hearing or who disrupts or obstructs the hearing to leave the hearing. The Decision Maker does not have the authority to dismiss allegations made pursuant to this policy.
- The hearing will be closed to the public. Complainant, Respondent, their respective Advisors are allowed to attend the entire porting of the hearing, excluding the Decision Maker's deliberations. Witnesses will be excluded from hearings except for the period of their own testimony.
- The Title IX Investigator assigned to the case will be called as the first witness and will present the Investigative Report.
- Both the parties' advisors may hear and question adverse parties and witnesses through cross-examination. Only advisors are permitted to ask cross-examination questions. At no point will the Complainant or Respondent be permitted to cross examine one another.
- If a party does not have an advisor, the University will provide that party an advisor of the University's choice to conduct cross-examination. Both the Complainant and the Respondent may rebut unfavorable inferences through cross-examination.
- Either party may request that the parties be placed in separate rooms during cross-examination while observing the questioning via live technological means.
- During cross-examination, the Decision Maker will determine relevancy and permissibility of a question prior to the individual answering.
- Credibility determinations will not be made based on a parties' designation (Respondent, Complainant, Witness), although challenging a party's credibility based upon information used during the hearing is permitted.
- Both the Complainant and the Respondent have the right to present information relevant to sanctioning on their own behalf by providing an impact statement.
- Within five (5) days of the hearing, the Decision Maker will issue a written determination regarding responsibility. The written determination will include:
  - o Identification of the allegations constituting Sexual Harassment or Sexual Misconduct;
  - o A description of the procedural steps taken from the receipt of the formal complaint through the Decision Maker's determination, including any notification to parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - o Findings of fact supporting the determination;
  - o Conclusions regarding the application of the facts to this policy;
  - o A statement of rationale for the result as to each allegation, including a determination regarding responsibility.

- o A statement of rationale for any disciplinary sanctions the University imposes on the Respondent, and whether any further remedies will be provided to the Complainant's continuing education or work at the University;
- o The right for either party to appeal in accordance with this policy; and
- o The procedures and bases for the parties to appeal the Decision Maker's determinations.
- Both the Complainant and the Respondent shall receive concurrent notification of the determination and any sanctions/remedies imposed by the Decision Maker.
- A record shall be made of the hearing and maintained for seven (7) years for the initial report of the matter.

## **A. Conflicts of Interest**

In addition to compliance with the Policy, a decision maker should disqualify himself or herself in a proceeding in which the decision maker's impartiality might reasonably be questioned, including but not limited to instances where:

- The Decision Maker has a personal bias or prejudice concerning either party, or has personal knowledge of facts concerning the hearing;
- The Decision Maker was directly involved in the matter in controversy;
- The Decision Maker previously supervised the Complainant or Respondent;
- The Decision Maker was a witness to the matter;
- The Decision Maker or a person in his/her family is related to either party; or
- The Decision Maker is in the same Department as the Complainant or Respondent.
- Failure of the Decision Maker to disqualify himself or herself or notify the Title IX Coordinator of potential conflicts of interest is considered a violation of this Policy.

## **B. Restricted Communication**

The Decision Maker shall not initiate, permit, or consider communication made outside the hearing process concerning a pending matter, except as follows:

- Any communication necessary to perform their responsibilities and duties; or
- Any communication for scheduling, administrative, or emergency purposes, which does not address substantive matters.

If a Decision Maker receives an unauthorized communication bearing upon the substance of a complaint, the Decision Maker shall promptly notify the Title IX Coordinator of the substance of the communication. Both parties will be made aware of the communication and given an opportunity to respond. A Decision Maker shall not investigate facts in a complaint and shall consider only the information presented during the hearing process.

## **C. Disciplinary Sanctions**

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

- The nature, severity of, and circumstances surrounding the violation;
- An individual's disciplinary history;
- Previous grievances or allegations involving similar conduct. Second or subsequent offenses will receive more severe sanctioning.
- Class standing (hours earned) where necessary to determine the impact of the sanction on the Complainant, Respondent, or University Community.

- The academic records of the parties;
- The need for sanctions to bring an end to the Sexual Harassment, Sexual Misconduct, and/or Retaliation;
- The need for sanctions/responsive actions to prevent the future recurrence of Sexual Harassment, Sexual Misconduct, and/or Retaliation; and
- The need to remedy the effects of the Sexual Harassment, Sexual Misconduct, and/or Retaliation on the Complainant and the community.

#### D. Recommended Sanctions

Sanctions or remedies for a student who has violated this Policy may include, but are not limited to: verbal or written warning, required educational program, probation, loss of visitation privileges, counseling, no contact order, relocation of residence halls, eviction from the residence halls, limited access to campus, community service hours, alcohol and drug assessment/counseling, suspension, and/or expulsion.

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.

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

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

### **E. Student Participation and Student Withdrawal**

The University may place an administrative hold on the records of any student who is the subject of an alleged Policy violation. The administrative hold will not permit the student to withdraw from and/or register for classes, and/or return to the University, and/or receive a copy of his or her transcript. At its discretion, during the course of an investigation, the University will temporarily remove the hold so as to not hinder the responding student’s educational progress. Should a student attempt to withdraw and/or not participate in the investigation and/or hearing, the process will nonetheless proceed in the student’s absence to the conclusion of the process.

### **F. Employee Resignation**

Should an employee resign while an investigation is pending, the records of the investigation will reflect that status. Should an employee resign, the process will nonetheless proceed in the employee’s absence to the conclusion of the process. The University will only render final findings but will not have jurisdiction to sanction the former employee.

## Part 13: Process to Appeal the Decision Maker's Determinations

Any of the Decision Maker's findings or sanctions may be appealed according to the grounds below.

### A. Appeal of Findings

The Complainant or Respondent may appeal: (1) the findings of the Decision Maker, (2) sanctions imposed by the Decision Maker, and (3) dismissal of a Formal Complaint.

Either party may appeal the Decision Maker's finding of responsibility. The appeal must be submitted, in writing, to the Title IX Coordinator or designee by close of business on the second business day following receipt of the closing letter. The other party is notified of the appeal and has two business days to respond in writing to the Title IX Coordinator or designee.

The Title IX Coordinator will forward the appeal to the Appellate Officer who will review the appeal and notify the parties of the determination. The appeal of findings process is the same for students and employees.

\*\*The Title IX Coordinator will gather all applicable and relevant documents and forward the appeal and any response received to the Appeals Officer.

#### *Appeals of Findings May Be Submitted Only on the Following Bases*

- Procedural irregularity that affected the outcome of the matter. A description of the error and its impact on the outcome of the case must be included in the written appeal;
- The Title IX Coordinator, Investigator, or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents or the individual Complainant or Respondent that affected the outcome of the matter. A description of the conflict and its impact on the outcome of the case must be included in the written appeal; or
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter. Information that was known to the Complainant or Respondent during the investigation, but which he or she chose not to present, is not new information. A summary of this new information and its potential impact on the investigation findings must be included in the written appeal.

The Appeals Officer or designee will review the appeal and the appeal response to determine if one of the ground(s) for appeal have been met. Appeals are confined to a review of the written record on appeal.

#### *Principles Governing Appeals of Findings*

- Appeals granted based upon procedural irregularity shall be remanded to the Decision Maker who will reopen the hearing and correct the procedural irregularity.
  - If the appeal is that the procedural irregularity occurred during the investigation, the Appeals Officer will remand the investigation back to the Title IX office to correct the error. In rare cases where the procedural irregularity cannot be fixed, such as conflict of interest, the Appeals Officer may remand the case back to the Title IX Office for a new investigation with a new investigator.
- For appeals granted based on bias or conflict of interest, the Appeals Officer shall review the entire record of the grievance process to determine whether or not there was any conflict or bias on part of the Title IX Coordinator, Title IX Investigator, or Decision Maker, and whether or not bias or conflict affected the outcome.
  - If it is determined there was no bias or conflict, the Appeals Officer will issue a written determination affirming the determination of the Decision Maker.



- o If it is determined there was bias or conflict, the Appeals Officer will remand the matter back to the stage where the conflict was present and the matter will restart with a new investigator or Decision Maker, as appropriate.
- Appeals granted based on new information shall be remanded to the investigative stage to determine if sufficient information exists to suggest there may be a violation of the policy. If so then the matter will be reheard, including the new information, by the Decision Maker.
- All parties shall be informed of the results to grant or deny the appeal in writing with a rationale for the results.
- If no bases for appeal are met, the appeal will be denied and the findings will be final.

## **A. Student Appeal of Sanctions**

Either party may appeal the sanction(s) imposed by the Decision Maker. The appeal must be submitted, in writing, to the Title IX Coordinator or designee by close of business on the second business day following receipt of the closing letter. The other party is notified of the appeal and has two business days to respond in writing to the Title IX Coordinator or designee.

The Title IX Coordinator will forward the appeal to the Appellate Officer who will review the appeal and notify the parties of the determination. The appeal of findings process is the same for students and employees.

\*\*The Title IX Coordinator will gather all applicable and relevant documents and forward the appeal and any response received to the Appeals Officer.

### ***Sanction Appeals May Be Submitted Only On The Following Bases***

- Procedural irregularity that affected the outcome of the matter. A description of the error and its impact on the outcome of the case must be included in the written appeal;
- The Title IX Coordinator, Investigator, or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents or the individual Complainant or Respondent that affected the outcome of the matter. A description of the conflict and its impact on the outcome of the case must be included in the written appeal; or
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter. Information that was known to the Complainant or Respondent during the investigation, but which he or she chose not to present, is not new information. A summary of this new information and its potential impact on the investigation findings must be included in the written appeal.

### ***Principles Governing Appeals Involving Sanctions Other Than Suspension Or Expulsion***

- The Appeals Officer or designee will review the appeal and written record to determine if one of the grounds for appeal have been met.
- If no grounds for appeal exists based on the written record, the appeal will be denied and the sanction will be final.
- If the Appeals Officer or designee determines that grounds for appeal exist, the appeal shall be heard by the Dean of Students. The Dean of Students shall review the appeal based only on the grounds identified by the Appeals Officer or designee. The Dean of Students may modify the sanction imposed by the Decision Maker.
- The Dean of Students' decision shall be final.

### ***Principles Governing Appeals Involving Sanctions Of Suspension Or Expulsion***

- The Appeals Officer or designee will evaluate the appeal, and prepare a recommendation for the Vice-President for Student Engagement and Campus Life as to whether or not the grounds for appeal have been met.
- The Appeals Officer or designee will submit his/her recommendation as to whether there are valid grounds for appeal, along with the appeal submitted by the student(s) and any response filed, to the Vice-President for Student Engagement and Campus Life.
- The Vice-President for Student Engagement and Campus Life shall review the materials submitted by the Appeals Officer or designee.
- The student may appeal the Vice-President's decision to the Board of Regents. The student must appeal on one of the three grounds listed above. The appeal must be submitted, in writing, within two business days of receiving the Vice-President's decision. The student must submit the appeal to the Appeals Officer.
- The Appeals Officer or designee shall provide the original recommendation as to whether there are valid grounds for appeal, the student's original appeal and the Vice-President's response, along with the new appeal to the Board of Regents.
- The Board of Regent's may modify the sanction imposed by the Decision Maker. The Board of Regent's decision shall be final.

### ***Principles Governing Appeals of Sanctions***

- Appeals are confined to a review of the written record on appeal, including but not limited to evidence presented at the hearing and documentation pertinent to the grounds for appeal. The person(s) hearing the appeal shall not consider matters outside of the hearing record in making a determination.
- All parties will be informed of the results of the appeal in writing. The decision of the Vice President for Student Life and Campus Engagement, or the Board of Regents in cases involving suspension or expulsion, is final and may not be appealed.

## **B. Employee Appeal of Sanctions**

Either party may appeal the sanctions imposed by the Decision Maker for violating the Policy. The appeal must be submitted, in writing, to the Title IX Coordinator or designee by close of business on the second business day following receipt of the closing letter. The other party is notified of the appeal and has two business days to respond in writing to the Title IX Coordinator or designee.

The Title IX Coordinator will forward the appeal to the Appellate Officer who will review the appeal and notify the parties of the determination. The appeal of findings process is the same for students and employees.

\*\*The Title IX Coordinator will gather all applicable and relevant documents and forward the appeal and any response received to the Appeals Officer.

### ***Appeals May Be Submitted Only On The Following Bases***

- Procedural irregularity that affected the outcome of the matter. A description of the error and its impact on the outcome of the case must be included in the written appeal;
- The Title IX Coordinator, Investigator, or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents or the individual Complainant or Respondent that affected the outcome of the matter. A description of the conflict and its impact on the outcome of the case must be included in the written appeal; or

- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter. Information that was known to the Complainant or Respondent during the investigation, but which he or she chose not to present, is not new information. A summary of this new information and its potential impact on the investigation findings must be included in the written appeal.

***Appeal of Sanctions for Non-Tenured Faculty Respondent, Staff Respondent, or Tenured Faculty Respondent (receiving disciplinary action other than termination)***

- The appeal must be submitted, in writing, to the Appeals Officer or designee by close of business on the second business day following notice of the disciplinary action.
- The other party is notified of the appeal and has two business days to respond in writing to the Appeals Officer or designee.
- The Appeals Officer or designee will review the appeal and the appeal response to determine if one of the ground(s) for appeal have been met. Appeals are confined to a review of the written record on appeal.
- If no ground(s) for appeal exists, the appeal will be denied and the sanction will be final.
- If one or more of the bases for appeal exist(s), the appeal shall be heard by the Director of Human Resources. The Director of Human Resources shall review the appeal based only on the grounds identified by the Appeals Officer or designee.
- The Director of HR may modify the sanction imposed by the Decision Maker. The decision of the Director of HR shall be final.

***Principles Governing Appeals of Sanctions***

- Appeals are confined to a review of the written record on appeal, including but not limited to information presented at the hearing and documentation pertinent to the grounds for appeal. The Director of HR shall not consider matters outside of the hearing record in making a determination.
- All parties will be informed of the results of the appeal in writing. The decision of the Director of Human Resources is final and may not be appealed.

***Appeal of Disciplinary Action for a Tenured Faculty Respondent Subject to Termination***

- The tenured faculty member has a right to appeal the discipline of termination to the Board of Regents, pursuant to KRS 164.360.
- Complainants may appeal based on the claim that termination should have been the discipline.
- The appeal must be submitted, in writing, to the Appeals Officer, or designee within two business days of the notice of disciplinary action.
- The other party is notified of the appeal and has two business days to respond in writing to the Appeals Officer or designee.
- The Appeals Officer or designee will review the appeal and offer a recommendation as to whether or not the grounds for an appeal have been met.
- The Appeals Officer or designee will submit his/her recommendation as to whether or not there are valid grounds for appeal, along with the written materials submitted by the Complainant and/or Respondent, to the Board of Regents.
- All documents to be used in the hearing before the Board of Regents must be fully disclosed to the Appeals Officer or designee no less than five (5) days in advance of the hearing.

## ***Principles Governing Appeals Involving Termination for Tenured Faculty***

- The Board of Regents will hear the discipline appeal as soon as is practicable, but no later than the next regularly scheduled Board meeting.
- Appeals granted based upon procedural irregularity shall be remanded to the Decision Maker to correct the procedural irregularity.
- For appeals granted based on bias or conflict of interest, the Board shall review the entire record of the grievance process to determine whether or not there was any bias or conflict by the Title IX Coordinator, Title IX Investigator, or Decision Maker, and whether bias or conflict affected the outcome.
  - If it is determined there was no bias or conflict, the Board will issue a written determination affirming the determination of the Decision Maker.
  - If it is determined there was bias or conflict, the Board will remand the matter back to the stage where bias or conflict was present and the matter will restart with a new investigator or Decision Maker, as necessary.
- Appeals based on new information will be remanded to the Decision Maker who will then review the original factual finding to determine if the new information changes the original factual finding. If the Decision Maker determines that the original factual finding has changed, the new factual finding, if appropriate, will be sanctioned.
- A faculty member shall not be removed until after ten (10) days-notice, in writing, stating the nature of the charges preferred, and after an opportunity has been given him/her to make a defense before the Board of Regents by counsel or otherwise and to introduce testimony which shall be heard and determined by the Board of Regents (KRS 164.360). In cases involving Sexual Misconduct or Sexual Harassment only, the Complainant shall have the same rights as the Tenured-Faculty Respondent.

All parties will be informed of whether the disciplinary action appeal is accepted and the results of the disciplinary action appeal decision. The decision of the Board of Regents is final and may not be appealed.

## **Part 14: Definitions**

### **Actual Knowledge**

Notice of Sexual Harassment or allegations of Sexual Harassment to KSU's Title IX Coordinator or any official of KSU who has authority to institute corrective measures on behalf of the University.

### **Advisor**

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 does interfere with the purpose of or create a disturbance in any investigative meeting, they will be asked to leave the meeting.

An advisor may be an attorney. Non-attorney Advisors may not directly participate in a live hearing because participating 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.

### **Appeals Officer**

A person who reviews appeals to determine if the appeal meets any of the grounds as set forth in this Policy.

### **Business Day**

A business day is a day during which KSU offices are open.

## **Complainant**

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.

## **Consent**

Consent means words or actions demonstrating a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Consent is determined based on the totality of the circumstances. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. Silence or the absence of resistance alone is not consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately. Consent cannot be obtained by: Force or Coercion; by ignoring or acting in spite of the objections of another; or by taking advantage of the incapacitation of another.

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

## **Dating Violence**

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 shall be determined based on a consideration of the following factors:
  - i. The length of the relationship.
  - ii. The type of relationship.
  - iii. The frequency of interaction between the persons involved in the relationship.

## **Decision Maker**

Person at the hearing who is responsible for determining if a violation occurred and issuing sanctions.

## **Domestic Violence**

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.

## **False Statement**

Providing a statement or information that the person providing such statement or information knows to be false at the time it is provided.

## **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.

## **Formal Complaint**

A document filed 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.

## **Incapacitation**

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.

## **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.

## **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.

## **Probable Cause**

A reasonable basis for believing that a violation of this policy may have occurred.

## **Protected Activity**

A protected activity includes making a report of a potential violation of the Policy or otherwise participating in an investigation of such a report.

## **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.

## **Responsible Employee**

An employee who:

- Has the authority to take action to redress Sexual Harassment or Sexual Misconduct; or
- Has the duty to report incidents of Sexual Harassment or Sexual Misconduct to appropriate school officials, or
- Is an individual reasonably believed to have this authority or duty.

## **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.

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.

## **Sexual Assault**

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.

- A. 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.
- B. 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.
- C. 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.
- D. 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.

## **Sexual Exploitation**

Taking non-consensual or sexual advantage of another person. This includes situations in which the conduct does not fall within the definitions of Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence or Stalking. Examples of Sexual Exploitation include, but are not limited to:

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.

## **Sexual Harassment**

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:

- A. 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.;
- 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 education program or activity. This type of sexual harassment is also referred to as Hostile Environment.;
- 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).

## **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.

## **Stalking**

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:

- A. Fear for his or her safety or the safety of others; or
- B. 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.

## **Student**

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

Persons who are not enrolled at KSU 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 policy.

## **Supportive Measures**

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the 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.

The University must maintain as confidential any supportive measures provided to Complainant or Respondent, 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.

## **Title IX Coordinator**

The University official responsible for the investigation of complaints of Sexual Harassment, resolving potential violations informally or formally, and facilitating the hearing process.

**University Community**

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

**University Property**

All buildings, land, facilities, and any other property owned, leased, rented, controlled, kept, or supervised by the University.

**Witness**

Any person who has knowledge of an alleged incident.