

## Office of Equal Opportunity Policy

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## I. Policy Scope & General Definitions

### A. Policy Scope

This policy applies to all University programs and activities and includes employees, students and visitors who engage or attempt to engage in these programs and activities. This policy addresses the reporting of and response to concerns related to discrimination and harassment on the basis of a protected characteristic within the University's programs and activities as defined in the [Administrative Regulation - Equal Dignity \(Interim\)](#).

Reports of alleged discrimination or harassment not based on a protected characteristic are not managed by the Office of Equal Opportunity. Concerns regarding discrimination or harassment not covered by this policy should be referred to the [Office of Student Conduct](#) (Student Cases) or the [Employee Relations Office](#) (Employee Cases).

### B. General Definitions

The Office of Equal Opportunity ("Equal Opportunity") refers to the [Administrative Regulation - Equal Dignity \(Interim\)](#) for definitions including definitions of discrimination, harassment, protected characteristics and retaliation. Additionally, for the purpose of this policy, we will use the following terms generally:

- Advisor- means an advocate or other individual who may attend both an investigative meeting or live hearing to provide advice, support or guidance to either Respondent or Complainant. An Advisor may be an attorney, though this is not required in non-hearing settings. Non-attorney Advisors may not directly participate in the hearing because participation in a live hearing may be regarded as the practice of law in Kentucky. An Advisor may not be a witness at the hearing of the matter for which they are serving as an advisor.
- Antisemitism- the Office of Equal Opportunity utilizes the definition of antisemitism established by the International Holocaust Remembrance Alliance and recognized by Kentucky 2021 Regular Session Senate Resolution 67: Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.
- Complainant- refers to the person who is the recipient of or impacted by the behavior in the alleged violation.
- Employee- refers to a faculty employee or staff employee, regardless of employee type (i.e. regular or temporary), as defined in [HR Policy and Procedure # 4: Employee Status](#).
- False Allegation- means an allegation that was made in bad faith, e.g. an allegation that the person making knew to be untrue at the time it was made. The mere fact an investigation concluded, but did not reach a finding of responsibility does not mean the allegation was made in bad faith.

- 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- refers to a written document required in cases related to Title IX of the Education Amendments of 1972 that is filed with the Office of Equal Opportunity for the purpose of initiating an investigation. This is detailed further in the [Sexual Harassment and Misconduct](#) section of these policies and procedures.
- Harassment- is a type of discrimination and is behavior based on a protected characteristic as defined in [Administrative Regulation - Equal Dignity \(Interim\)](#). The University defines harassment using the definition set by the Supreme Court of the United States: behavior that is “so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims’ educational [or employment] experience and that the [victims] are effectively denied equal access to an institution’s resources and opportunities.”<sup>1</sup> In some cases federal law or federal guidelines may require the University to use a broader definition of harassment. Such examples are further defined within this policy.
- Incapacitated- means a person is impaired to such a level that they lack the physical and/or mental ability to make informed, rational judgments and/or cannot appraise or control their own conduct or make decisions with the degree of understanding they typically possess. A person may be impaired by an intoxicant, by mental illness or deficiency, or by physical illness or disability to the extent that personal decision-making is impossible. A person can be intoxicated without being incapacitated. A person who is below the statutory age of consent is incapacitated.
- Intake Meeting- is a meeting held by Equal Opportunity with either the Complainant or Respondent. This meeting is not an investigative meeting or interview, but rather serves to offer information about the process, answer questions and provide opportunity to request supportive measures.
- Investigative Meeting- is a meeting Equal Opportunity holds with a party to an investigation including but not limited to the Complainant, Respondent, and/or Witnesses for the purpose of gathering information regarding the allegation. These meetings are also referred to as interviews.
- Members of the University Community- This refers to the faculty, staff, students and volunteers, as well as customers and visitors to the University.
- Probable Cause- means a reasonable basis for believing that a violation of this policy may have occurred

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<sup>1</sup> Davis Next Friend LaShonda D. v. Monroe Cnty. Bd. Of Educ., 526 U.S. 629, 651, (1999).

- Reporter- refers to the person who submits a report of alleged discrimination or harassment to the Office of Equal Opportunity. Reporters may not be informed of action taken after a report is submitted and/or outcome.
- Respondent- refers to the person who is alleged to be engaging in behavior that may be a violation of [Administrative Regulation - Equal Dignity \(Interim\)](#).
- Sanction- means any educational or disciplinary measure provided to encourage self-reflection regarding Respondent's policy violation, to stop further inappropriate behavior, and to deter any subsequent violations. Sanctions should be appropriately connected to the violation. Sanctions may also be referred to as Restorative Actions.
- Sexual Assault- is a form of Sexual Harassment or Sexual Misconduct. This is further described in the [Sexual Harassment & Misconduct](#) portion of these Policies and Procedures.
- Sexual Harassment or Misconduct- is a form of sex discrimination. This is further described in the [Sexual Harassment & Misconduct](#) portion of these Policies and Procedures.
- Student- "Student" means any person who is defined as a student in the [Code of Student Conduct](#). Student status continues whether or not UK's academic programs are in session.
- Supportive Measures- are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available and without fee or charge to Complainant or Respondent. 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 Discrimination and/or Harassment. A party does not need to initiate an investigation or a formal complaint to receive supportive measures. More details can be found in the [Supportive Measures](#) section of these policies and procedures.

### C. Federally Required Coordinator

Certain Federal regulations and laws require that the university name a coordinator to facilitate compliance with the named regulation.

#### Title IX and 1557 Coordinator:

Sarah Mudd

Executive Director, Office of Equal Opportunity

18th Floor, Patterson Office Tower

(859) 257-8927

sarah.mudd@uky.edu

## D. Recordkeeping

Equal Opportunity adheres to all University, State and Federal requirements regarding recordkeeping. This includes maintaining for at least a period of seven years records related to Title IX Sexual Harassment as required by 34 CFR 106.45(b)(10).

## II. Reporting Procedures and Confidential Resources

### A. Mandatory Reporting

Unless specifically noted as a Confidential Resource in this policy, all University of Kentucky employees are mandatory reporters and are required to report information related to possible violations of Equal Dignity to the Office of Equal Opportunity as soon as reasonably possible. Mandatory reporters may not submit reports anonymously. Reports of behavior that constitute an immediate threat to the safety or security of the person experiencing the behavior or the University community should be made to the UK Police Department (UKPD). Please see [\*Administrative Regulation- Equal Dignity \(Interim\)\*](#) regarding expectations of mandatory reporters.

Reports can be made by contacting the Office of Equal Opportunity at the locations below. The fastest way to submit reports is using the “Make a Report” form on the Equal Opportunity website.

Office of Equal Opportunity  
18<sup>th</sup> Floor, Patterson Office Tower  
Phone: 859-257-8927 Fax: 859-562-0607  
Email: [equalopportunity@uky.edu](mailto:equalopportunity@uky.edu)  
Website: [oeo.uky.edu](http://oeo.uky.edu)  
Reporting Form: <https://go.uky.edu/ieeo-report>

### B. Confidential Resources

The following are designated confidential resources for students and employees. Confidential offices can provide support and referrals to parties without the requirement to report allegations of discrimination and/or harassment to Equal Opportunity. Additional community resources can be found on the Equal Opportunity [website](#).

#### [TRACS \(Triage, Referral Assistance, Crisis Support\)](#) *(students only)*

Students must access TRACS before Counseling Center

Gatton Student Center, East Wing, 2<sup>nd</sup> Floor

859-218-7227

[TRACS@uky.edu](mailto:TRACS@uky.edu)

#### [UK Counseling Center](#) *(students only)*

Gatton Student Center, Suite C330

859-257-89011

[University Health Services](#) *(students only)*

830 S. Limestone  
859-323-2778

[Violence, Intervention, and Prevention \(VIP\) Center](#) *(students and employees)*

Multidisciplinary Science Building (MDS), Suite 401  
859-257-3574  
[vipcenter@uky.edu](mailto:vipcenter@uky.edu)

[UK Work-Life and Well-Being](#) *(employees only)*

106 Bosworth Hall  
859-257-9555  
[humanresources@uky.edu](mailto:humanresources@uky.edu)

Anonymous reports may be made to Equal Opportunity utilizing the [Make a Report form](#). However, the University has limited ability to address anonymous reports.

### C. Reporting Allegations

Any person can report discrimination and harassment, including sexual harassment and misconduct, regardless of whether the person reporting is the person alleged to be the victim of conduct that could constitute a violation of university regulations and policies. A report may be made in person, by mail, by telephone, by electronic mail, using the contact information listed for the Title IX or 1557 Coordinator, or via Office of Equal Opportunity [reporting form](#) on the Equal Opportunity website. There is no statute of limitation for reporting behavior that may be in violation of Equal Dignity, however time passed may limit options for response or resolution. While anyone may submit reports to Equal Opportunity, those who are not members of the University Community may not serve as Complainants in a resolution process. Those who are not members of the University Community may not serve as Complainants in a resolution process.

## III. Response to Reports and Formal Complaints

Equal Opportunity will review and respond to all reports submitted in a timely manner. In most cases the first step is to send outreach to the Complainant. This outreach will include an offer to meet with a member of the Equal Opportunity staff to discuss the report, the Complainant's resolution options and any supportive measures that the Complainant may need.

### A. Supportive Measures

Both Complainant and Respondent may access supportive measures at any time by contacting the Equal Opportunity. An investigation does not have to be requested for supportive measures to be provided. Supportive measures are non-disciplinary, non-punitive, individualized services that are intended to restore or preserve equal access to University programs and activities. Supportive measures are things reasonably available to a party without fee or charge and without unreasonably burdening the other party.

These may include measures designed to protect the safety of all parties or the University's educational environment or deter discrimination or harassment.

Examples of the range of Supportive Measures that may be initiated at any time and are not dependent on there being an investigation or an outcome of the case include, but are not limited to:

1. Counseling;
2. Extensions of deadlines or other course-related adjustments;
3. Modifications of work or class schedules;
4. Campus safety or security escort services;
5. Mutual restrictions on contact between the parties;
6. Changes in work or housing locations;
7. Leaves of absence;
8. Increased security and monitoring of certain areas of the campus; and
9. Other similar appropriate measures.

Supportive measures are confidential to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The Executive Director of the Office of Equal Opportunity & Title IX Coordinator or their designee, is responsible for coordinating the effective implementation of supportive measures.

## B. Intake Meetings

If a Complainant engages with outreach from Equal Opportunity, they will be asked to schedule an intake meeting with a member of the Equal Opportunity team. During this meeting Equal Opportunity staff will discuss reporting options including formal complaints with Equal Opportunity where appropriate or required, information on pursuing criminal or other legal action and support measures available to the individual. Equal Opportunity may also ask questions of the Complainant regarding the allegations to gather more information and better inform resolution options.

With respect to Sexual Harassment under Title IX, the Title IX Coordinator shall:

- promptly contact the Complainant to discuss the availability of Supportive Measures,
- consider the Complainant's wishes with respect to Supportive Measures,
- inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and
- explain to the Complainant the process for filing a Formal Complaint.

## IV. Resolution of Complaints

Typically, Equal Opportunity resolution steps are Complainant driven. This means that generally a Complainant can decide if they wish to have Equal Opportunity initiate an investigation or if they wish to pursue an informal resolution option. However, there are some cases where Equal Opportunity must initiate an investigation and in those cases the Complainant will be notified and offered the opportunity to participate. Examples of these cases include but are not limited to allegations that present a health or safety threat to the campus, when Equal Opportunity has multiple reports that may indicate a pattern of behavior or certain reports regarding employees.



## A. Informal Resolution

In some cases, resolving a report via informal resolution is an option. Informal resolution provides an opportunity for the conduct in question to be addressed outside of a formal investigation process. The goal of informal resolution is to stop alleged conduct that may be a violation of university policy and provide restorative options to the impacted party. Informal resolution is not an option in cases where a Sexual Harassment or Misconduct formal complaint is brought by a student against an employee. The University has the right to determine that informal resolution is not appropriate in any given case.

### 1. Employee Coaching

In some complaints against an employee, a Complainant may request that Equal Opportunity conduct an Employee Coaching conversation to resolve the report. Additionally, Equal Opportunity can elect to address a report where a Complainant does not engage with Equal Opportunity via Employee Coaching. When a case is managed via Employee Coaching, that conversation serves as a resolution of the report and the case cannot be reopened unless new actions arise. A written closing letter is sent to the Respondent, and if engaged, Complainant, to document the closure, but there is no finding of responsibility.

### 2. Facilitated Informal Resolution

In some cases, the Complainant may request that Equal Opportunity address the report via Facilitated Informal Resolution. The Respondent must also agree to engage in Facilitated Informal Resolution for this to be a resolution option. The University must also agree that the case is appropriate for resolution in this manner. Facilitated Informal Resolution is not an option in cases where a Sexual Harassment or Misconduct formal complaint is brought by a student against an employee.

During Facilitated Informal Resolution, a member of the Equal Opportunity team will meet with parties individually to address and attempt to resolve the concerns outside of a formal investigation. This process is voluntary, and both parties can elect to withdraw from this process at any point before a final agreement is reached. The process to reach agreement through Facilitated Informal Resolution may vary by case and is decided through an interactive process with the parties.

The Complainant, Respondent and University must agree to the final terms of the resolution. When a case is resolved via Facilitated Information Resolution both parties will receive a signed copy of the final agreement. The final agreement serves as a resolution of the report and the case cannot be reopened unless new actions arise.

### 3. No Action Requested

In some cases, the Complainant may not wish to engage with one of the aforementioned Informal Resolution options or an Investigation but rather may simply wish to have their concerns noted on record. In these cases, the Complainant will receive written notification of this request and can elect to reopen the case at a future time. Additionally, the University may either be required to either proceed with an investigation or review of the matter without the Complainant's participation at the time of the report or reopen the case if additional details or reports arise that may indicate a possible pattern of behavior or a

health or safety threat to the campus. If the University reopens the report or proceeds in the absence of the Complainant, the Complainant will be notified.

## B. Investigation

When requested by the Complainant or when deemed necessary by Equal Opportunity, Equal Opportunity will conduct an investigation into reports or formal complaints. When conducting an investigation, Equal Opportunity will take the following steps. Equal Opportunity may consolidate multiple reports or formal complaints where the allegations arise out of the same facts or circumstances. Any individual designated as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondent generally or an individual complainant or respondent.

### 1. General Counsel Certification

In some cases, Kentucky State law requires certification of an investigation by the University's General Counsel. More details regarding this can be found in the Bias Incident Policy.

### 2. Notice of Investigation

Equal Opportunity will send to both parties a notice of investigation. This includes:

- general information regarding the allegations sufficient to allow the Respondent the ability to prepare a response to the allegations;
- opportunity to meet with the investigator for an intake meeting to discuss procedures and answer procedural questions;
- general information regarding the investigation process including statements that:
  - Respondent is presumed not responsible for the alleged conduct;
  - A determination for responsibility is made at the conclusion of the process;
  - Parties may have advisors of their choice, as outlined in the [Advisor portion](#) of these policies and procedures;
  - Knowingly submitting false statements or knowingly submitting false information is grounds for University discipline under [Administrative Regulation- Employee Code](#) and/or [Code of Student Conduct](#).
  - If the University discovers any additional allegations about Complainant or Respondent that are not included in the original notice, the University will provide additional notice of allegations to the parties;
  - Respondents will have at least two (2) business days prior to their first investigative meeting to prepare a response to the allegations. Any such response may be, but is not required to be, submitted in writing.

### 3. Right to Consolidate Complaints

Equal Opportunity may consolidate complaints as to allegations of [Administrative Regulations- Equal Dignity \(Interim\)](#) 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. Where a grievance process involves more than one complainant or more than one respondent, references in this policy to the singular "party," "complainant," or "respondent" include the plural, as applicable.

#### 4. Investigative Meetings

The Equal Opportunity Investigator will meet with parties to the case to gather information regarding the allegations. Parties to the case may include the Complainant, Respondent and/or witnesses. Equal Opportunity cannot compel parties to participate in Investigative Meetings but will make multiple efforts to schedule with parties. If a party does not participate in investigative meetings, Equal Opportunity will proceed in their absence. Both the Complainant and Respondent may provide the Equal Opportunity Investigator with names of individuals to serve as witnesses. When providing witness names, they must also provide contact information and a brief description of what information the Witness is expected to provide. The Equal Opportunity Investigator has the discretion to only interview Witnesses with relevant first-hand information regarding the allegation at hand and generally Equal Opportunity does not interview character witnesses. The Equal Opportunity Investigator may also call additional witnesses identified through the investigation that are not named by either the Complainant or Respondent.

#### 5. Relevant Document and Information Review

During the investigation the Equal Opportunity Investigator may collect additional documentation or information relevant to the allegations. The Complainant and Respondent have the opportunity to submit relevant documentation and information to the Equal Opportunity Investigator for consideration. The Investigator has the discretion to provide a reasonable deadline for submission of such information that will be no less than three business days following the date of an Investigative Meeting. When submitting information for consideration, the Complainant and Respondent, must provide information regarding why the information is relevant to the specific allegations. The Equal Opportunity Investigator will provide the parties with instructions on how to submit this information. To conclude investigations in a timely manner, Equal Opportunity may not be able to accept submission of materials on an ongoing basis during the investigation.

Equal Opportunity will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. Equal Opportunity cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless Equal Opportunity obtains the party's voluntary, written consent to do so.

#### 6. Closure of Investigation

If at the conclusion of the investigation either the result of a finding of a policy violation is sufficiently severe that it may result in the suspension of an employee for a period greater than five days, termination of employment, removal of a student from housing, or the suspension or expulsion of a student, the case will be referred to the Equal Opportunity Hearing Board. All charges related to Sexual Harassment as defined in [section VII.A](#) of this policy will be referred to the Equal Opportunity Hearing Board regardless of severity and without any probable cause review.

If at the conclusion of the investigation, the Equal Opportunity Investigator believes the allegations would meet the requirement to hold a hearing, they will refer the final investigation materials to the Equal Opportunity Executive Director, or their designee, for probable cause review. If the Executive Director determines the elements of Probable Cause are met to refer to a hearing, [Administrative Regulation - Due Process \(Interim\)](#) and [Policy- Due Process: Equal Dignity](#) will be followed. In some cases, the referral of a case to a hearing panel requires certification by the University's General Counsel as noted in the Bias Incident Policy. All charges related to Sexual Harassment as defined in [section VII.A](#) will be referred to the Equal Opportunity Hearing Board without any probable cause review.

With respect to all charges that are not related to Sexual Harassment as defined in [section VII.A](#), if the Equal Opportunity Investigator determines that the conduct would not warrant referral to an Equal Opportunity Hearing, they will issue a closing letter to both parties. The closing letter will outline the allegations investigated, the finding regarding responsibility and rationale for the finding. If a Respondent is found responsible for a violation of University regulations and/or policies, the Equal Opportunity Investigator will also issue recommended sanctions. In cases where the Respondent is an employee, the recommended sanctions are issued to the Respondent's supervisor for documentation and application. In cases where the Respondent is a student, recommendations are referred to the Office of Student Conduct.

#### 7. Accepted Resolution

In some cases, the Respondent may elect to accept responsibility for a violation and accept an agreed sanction recommended by Equal Opportunity. If the Respondent accepts responsibility, they waive their right to an investigation, hearing and/or appeal. At the time of an agreed resolution, the case will be closed, and the appropriate unit administrator(s) will be notified as noted in [IV.B.4](#).

#### C. Appeal Rights

Cases referred to an Equal Opportunity Hearing have appeal rights as outlined in [Administrative Regulation - Due Process \(Interim\)](#) and [Policy- Due Process: Equal Dignity](#). Cases resolved via an Informal Resolution may not be appealed.

Complainants or respondents in cases resolved via investigation with a decision being issued by the Equal Opportunity Investigator may request reconsideration by the Executive Director of the Office of Equal Opportunity. This request must be made in writing within five (5) business days of the issuance of the closing letter. The request must outline the reason for appeal. The Executive Director will review the request, materials gathered during the investigation, interview notes or transcripts and issue a written outcome. The Executive Director can uphold the original outcome, reduce recommended sanctions and/or reverse the original outcome. The Executive Director cannot increase recommended sanctions. This reconsideration outcome is final and may not be appealed.

## V. Rights of Complainant and Respondent

### A. Role of an Advisor

Both parties have the right to have up to two advisors present during any investigation, pre-hearing meeting or hearing. Generally, advisors may communicate privately with the individual they are supporting but may not respond on their behalf. During an Investigative Meeting, Equal Opportunity will direct questions to the Complainant or Respondent and their advisor(s) may not respond on their behalf or offer their own perspective on the investigation. If a party wishes to have an advisor who is an attorney present during any meeting, they are required to notify the Office of Equal Opportunity of the advisor's name and that they are an attorney no later than two business days before the meeting. Equal Opportunity reserves the right to have a member of the Office of Legal Counsel present when a party brings an attorney advisor. Should a party bring an attorney advisor without advance notice to Equal Opportunity, the meeting may need to be rescheduled.

If an investigation results in a hearing, the Respondent will have an attorney advisor question witnesses and/or Complainant on their behalf. More information about the role of an advisor during a hearing may be found in [Policy- Due Process: Equal Dignity](#).

### B. Rights of a Complainant

- In most cases, the Complainant has the right to choose whether to initiate an Equal Opportunity investigation.
- Complainant has the right to access supportive measures regardless of whether they file a Formal Complaint.
- In addition to pursuing administrative penalties and remedies, the Complainant maintains the right to pursue criminal or other legal action.
- Both the Complainant and Respondent have the right:
  - To have the University respect their rights provided by the United States and Kentucky Constitutions;
  - To be treated with respect by University officials;
  - To take advantage of campus support resources;
  - To experience a safe living, educational, and work environment;
  - To have up to two (2) Advisors, including attorneys, present during any investigation, pre-hearing meeting, or hearing;
  - To have an attorney represent them at any hearing;
  - To refuse to have an allegation resolved through conflict resolution procedures;
  - To receive amnesty for certain student misconduct, such as alcohol or drug violations, that occurred ancillary to the incident;
  - To be free from retaliation for reporting violations of this regulation or cooperating with an investigation;
  - To have complaints heard in accordance with University procedures;

- To be informed in writing of the outcome/resolution of the complaint, any sanctions where permissible, and the rationale for the outcome where permissible;
  - To have minimal interaction or contact with Respondent or Complainant; and
  - To request supportive measures from the University to ensure minimal interaction or contact with Respondent or Complainant.
- The University will keep private to the extent possible the identity of any individual who has made a report or complaint of discrimination or harassment, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment or Sexual Misconduct, any Complainant, any individual who has been reported to be the perpetrator of discrimination or harassment, any Respondent, and any witness. The University may be required to disclose the identity of individuals when necessary to provide due process to the Respondent or to comply with federal or state regulations or laws.

### C. Rights of Respondent

- Respondent has the right to be presumed innocent. It is the University's responsibility to prove that Respondent engaged in behavior that violated university regulations or policies.
- Both the Complainant and Respondent have the right:
  - To have the University respect their rights provided by the United States and Kentucky Constitutions;
  - To be treated with respect by University officials;
  - To take advantage of campus support resources;
  - To experience a safe living, educational, and work environment;
  - To have up to two (2) Advisors, including attorneys, present during any investigation, pre-hearing meeting, or hearing;
  - To have an attorney represent them at any hearing;
  - To refuse to have an allegation resolved through conflict resolution procedures;
  - To request resolution of allegations through an accepted resolution;
  - To receive amnesty for certain student misconduct, such as alcohol or drug violations, that occurred ancillary to the incident;
  - To be free from retaliation for reporting violations of this regulation or cooperating with an investigation;
  - To have complaints heard in accordance with University procedures;
  - To be informed in writing of the outcome/resolution of the complaint, any sanctions where permissible, and the rationale for the outcome where permissible;
  - To have minimal interaction or contact with Respondent or Complainant; and
  - To request supportive measures from the University to ensure minimal interaction or contact with Respondent or Complainant.
- The University will keep private to the extent possible the identity of any individual who has made a report or complaint of discrimination or harassment, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment or Sexual Misconduct, any Complainant,



any individual who has been reported to be the perpetrator of discrimination or harassment, any Respondent, and any witness. The University may be required to disclose the identity of individuals when necessary to provide due process to the Respondent or to comply with federal or state law.

## VI. Interim Remedies

The Executive Director, or their designee, may impose interim suspension on a Respondent in cases where the allegations present a threat to the physical health or safety of an individual or the University community. Before doing so, the Executive Director must: undertake an individualized safety and risks analysis; and determine that an immediate threat to the physical health or safety of any individual arising from the allegations justifies removal. The Executive Director's analysis, determinations, and notice must be in writing. Additionally, the University may place a non-student employee on administrative leave during the pendency of a grievance process. Additional information regarding Interim Suspension can be found in [Administrative Regulation - Due Process \(Interim\)](#).

## VII. Discrimination and Harassment on the Basis of Sex including, Sexual Harassment and Misconduct

This section outlines procedural steps related to claims of discrimination and harassment on the basis of sex which includes reports of Sexual Harassment and Misconduct. These reports include a variety of behaviors including quid pro quo sexual harassment, hostile environment sexual harassment, sexual assault, domestic violence, dating violence, stalking and/or sexual exploitation.

### A. Definitions

**Dating Violence-** “Dating Violence”, is a form of Sexual Harassment or Sexual Misconduct. The federal regulation uses the definition in 34 U.S.C. 12291(a) (10), which defines Dating Violence as violence committed by a person— (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) Where the existence of such a relationship is to be determined based on a consideration of the following factors: a. The length of the relationship. b. The type of relationship. c. The frequency of interaction between the persons involved in the relationship.

**Discrimination on the Basis of Sex-** is an action or behavior that results in negative or different treatment of an individual based upon their sex.

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

**Formal Complaint** – “Formal Complaint” means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the University investigate the allegation of Sexual Harassment. “Document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

**Sexual Assault-** “Sexual Assault” is a form of Sexual Harassment or Sexual Misconduct. The federal regulation uses the definition 20 U.S.C. 1092(f)(6)(A)(v), which defines Sexual Assault as an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.<sup>2</sup> A sex offense is any act directed against another person, without the consent of the second person, including instances where the second person is incapable of giving consent.

1. **Sexual Assault: Rape** is defined as penetration, regardless of how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another individual, or by a sex-related object. This definition covers cases where the victim cannot provide consent due to temporary or permanent mental or physical incapacity (including resulting from drugs or alcohol) or due to age. Physical resistance by the victim is not required to establish lack of consent.
2. **Sexual Assault: Unwelcome Sexual Contact** is defined as the intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor’s clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.
3. **Sexual Assault: Incest** is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
4. **Sexual Assault: Statutory Rape** is defined as sexual intercourse with a person who is under the statutory age of consent.

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

**Title IX Sexual Harassment-** involves allegations that fall under Title IX of the Education Amendments of 1972 and is conduct on the basis of sex that occurs in the University’s educational program or activity and satisfies one or more of the following:

- **Quid Pro Quo Sexual Harassment-** is when 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.

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<sup>2</sup> Because Title IX Regulations require the use of the FBI definition of sexual assault, the current FBI standard at the time of the formal complaint will be used. Should that FBI definition differ from what is listed in the Equal Opportunity Policy, Equal Opportunity will defer to the origin definition.



- **Title IX Hostile Environment Sexual Harassment-** 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.
- **Sexual Assault, Dating Violence, Domestic Violence, or Stalking-** as defined herein.

**Sexual Exploitation-** "Sexual Exploitation" means taking non-consensual or abusive sexual advantage of another and includes situations in which the conduct does not fall within the definitions of Sexual Harassment or Sexual Assault, Dating Violence, Domestic Violence, or Stalking. Examples of sexual exploitation include, but are not limited to the following:

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

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

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

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

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

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

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

## B. Initiating a Complaint

Making a report of Discrimination and Harassment on the Basis of Sex is not the same thing as filing a Formal Complaint. In complaints regarding allegations of Discrimination on the Basis of Sex as defined above, a formal written complaint is not required.

Complaints Regarding Title IX Sexual Harassment and/or Sexual Misconduct must have a Formal Complaint to initiate an investigation or informal resolution. At the time of filing the Formal Complaint, a Complainant must be participating in or attempting to participate in the University's education program or activity. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. The Formal Complaint will be provided in the Notice of Investigation and Investigative Report.

## C. Complaint Resolution

Complaints of Discrimination and Harassment on the Basis of Sex and Sexual Misconduct may be resolved using any of the resolution options [outlined above](#).

### 1. Investigation of Complaints of Title IX Sexual Harassment

Investigations regarding complaints of Title IX Sexual Harassment vary slightly from [investigative procedures](#) outlined above.

#### *a) Preliminary Report & Evidence Review*

Prior to the conclusion of the investigation, the University will provide both parties an opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence. The University will also provide both parties and their advisors with an electronic or hard copy of the Preliminary Investigative Report, including all the evidence directly related to the allegations raised in the formal complaint. This does not include information related to supportive measures provided to individuals that do not impact the other party in a matter and does not include any investigative notes of the investigator. The parties will have at least 10 days to submit a written Rebuttal or Supplementation to the Preliminary Investigative Report to the Equal Opportunity Investigator.

#### *b) Investigative Report*

At the conclusion of an Investigation the Complainant and Respondent will receive a Final Investigative Report. Investigator will consider the written responses to the preliminary investigation report and the evidence review before completing the Final Investigative Report and will include the written responses in the Final Investigative Report to the Title IX Coordinator, Respondent and Complainant. The University must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination. This will be sent to parties no sooner than ten (10) days before referral to an Equal

Opportunity Hearing. Both parties may provide a written response to the Final Investigative Report and evidence as a part of their submission of information outlined in [Policy- Due Process: Equal Dignity](#).

*c) Referral to Equal Opportunity Hearing Board*

At the conclusion of the investigation, charges of a violation of Title IX Sexual Harassment will always be referred to the Equal Opportunity Hearing Board, regardless of the potential recommended sanctions unless they are dismissed under the guidelines [below](#). Equal Opportunity Hearings are conducted live as outlined in [Policy- Due Process: Equal Dignity](#).

Charges of Sexual Misconduct and Discrimination on the Basis of Sex will follow the steps outlined in [Section IV.B.4](#) of these Policies and Procedures.

## D. Dismissals of Sexual Harassment Formal Complaints under Title IX

In some cases, regulations regarding Title IX require that the University dismiss formal complaints of Title IX Sexual Harassment.

The Title IX Coordinator, or their designee, must dismiss a formal complaint of Title IX Sexual Harassment if the conduct alleged in the formal complaint:

1. Would not constitute Title IX Sexual Harassment even if proven;
2. Did not occur in the University's education program or activity; or
3. Did not occur against a person in the United States.

The Title IX Coordinator, or their designee, may dismiss the Formal Complaint or any allegations in the Formal Complaint if:

1. At any time during the investigative process, Complainant notifies the Title IX Coordinator that Complainant would like to withdraw the Formal Complaint or any allegation in the Formal Complaint;
2. Respondent is no longer enrolled in or employed by the University; or
3. Specific circumstances prevent the University from gathering evidence sufficient to make a determination as to Probable Cause

If a formal complaint of Title IX Sexual Harassment is dismissed due to one of the above reasons, the University may refer it for consideration under other University regulations, policies and procedures including other charges under the [Administrative Regulation: Equal Dignity \(Interim\)](#).

## VIII. Allegations Regarding Employment Settings

In some cases, Federal Law, specifically Title VII of the Civil Rights Act of 1964, requires that the institution use a different definition of harassment. When allegations of harassment based on protected characteristics occur solely within the context of employment at the university, Equal Opportunity may define harassment as: unwelcome conduct when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3)

such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. This includes allegations of sexual harassment that fall outside the definition of Title IX-Sexual Harassment but occur within the employment setting.

## IX. False Allegations and Statements

Knowingly submitting intentionally false allegations of discrimination or harassment or intentionally false statements to Equal Opportunity is prohibited. If Equal Opportunity becomes aware that a person may have knowingly submitted false allegations or statements, Equal Opportunity may investigate that as a separate violation of this Policy. Additionally, if a party believes that a person knowingly submitted false information for an Equal Opportunity investigation, they can submit a report to Equal Opportunity outlining the information they believe was knowingly false. The mere fact an investigation concluded with a finding of not responsible or no probable cause does not mean the allegation was made in bad faith or was knowingly false. Additionally, if an individual makes a false allegation to a Mandatory Reporter, the Mandatory Reporter does not make a false report for fulfilling their reporting obligations.

## X. Corrective Actions and Disciplinary Procedures

If an Equal Opportunity investigation results in a finding that a violation of the policy did occur and a hearing is not required, Equal Opportunity will make recommendations to the appropriate party regarding corrective action or sanctions. The goal of corrective actions and sanctions is to remedy the impact of the violation on the Complainant and prevent recurrence of violations. Both the Complainant and Respondent will be informed of the outcome of the corrective action or disciplinary process, though the Complainant will only be notified of sanctions that impact them directly.

### A. Allegations Against Students

With respect to allegations that do not concern Title IX Sexual Harassment as defined in [Section VII.A](#), the range of sanctions for students that Equal Opportunity may impose without a hearing includes disciplinary probation, counseling assessment, social restrictions, social suspension and suspension of five days or less. With respect to allegations against students concerning Title IX Sexual Harassment as defined in [Section VII.A](#) or any Equal Dignity violation referred for a hearing, sanctions may only be imposed after a hearing and following any determination of responsibility; the range of sanctions includes disciplinary probation, counseling assessment, social restrictions, social suspension, removal from campus housing, suspension, or expulsion. Additional educational sanctions also may be imposed when appropriate.

### B. Allegations Against Employees

Recommended range of sanctions for employees that Equal Opportunity may impose without a hearing includes counseling, probation, written or oral warnings and suspension of five days or less. With respect to allegations against employees concerning Title IX Sexual Harassment as defined in [Section VII.A](#) or any Equal Dignity violation referred for a hearing, sanctions may only be imposed after a hearing and following any determination of responsibility; the range of sanctions includes counseling, probation, written or oral

warnings, suspension, or termination. Additional educational sanctions may be imposed when appropriate.

## XI. Regulation References

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

Title VI of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964

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

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

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

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

Section 1557 of the Affordable Care Act

House Bill 4- in final version

SJR 55