

UNIVERSITY OF KENTUCKY PROCEDURES FOR ALLEGATIONS OF SEXUAL VIOLENCE, STALKING, DOMESTIC VIOLENCE AND DATING VIOLENCE

I. INTRODUCTION

These procedures are applicable to allegations, investigations, and adjudication of cases involving *Administrative Regulations (AR) 6.2, Policy on Sexual Assault, Stalking, Dating Violence, and Domestic Violence*. These procedures apply to University employees and students.

Allegations related to *AR 6:1, Policy on Discrimination and Harassment* are normally adjudicated under the Code of Student Conduct for students, Human Resources Policy and Procedure for staff, and the Faculty Discipline Policy for faculty. (add links) However, depending on the circumstances, the Office of Institutional Equity and Equal Opportunity (IEEO) may refer allegations related to AR 6:1 for adjudication under these procedures.

II. DEFINITIONS

- A. *Burden of Proof* is the “preponderance of the evidence” standard.
- B. *Complainant* means any person (or his/her proxy) alleging a violation(s) of AR 6:2. The University may serve as a complainant, designate a proxy complainant, or initiate proceedings without a formal complaint from the victim of an alleged violation.
- C. *Employee* means a faculty employee or staff employee, regardless of employee type (i.e., regular or temporary), as defined in *Human Resources Policy and Procedure #4.0: Employee Status*.
- D. *The Office of Institutional Equity and Equal Opportunity (IEEO), which includes the University Title IX Coordinator*, is the University office responsible for investigating complaints of sexual assault, stalking, dating violence, and domestic violence in violation of AR 6:2, resolving potential violations, and recommending appropriate sanctions when violations are confirmed. *Preponderance of the Evidence* means that it is more likely than not (50.1% certain) that the respondent is responsible for the alleged act.
- E. *Registered Student Organization* means a group of identifiable persons who have complied with the requirements for registration as determined by the Office of Student Involvement in accordance with *AR 4:1, Registration of Student Organizations*. Groups that seek, but have not yet been granted registered status are also included.

- F. *Respondent* means any employee, student, or registered student organization alleged to have violated AR 6:2.
- G. *Sanction* means any educational or disciplinary measure provided to encourage self-reflection regarding the respondent's policy violation, to stop further inappropriate behavior, and to deter any subsequent violations. *Sanctions* should be appropriately connected to the violation.
- H. *Sexual Misconduct Hearing Board (HB)* means a 3-person hearing panel consisting of a chair and two (2) other members selected by IEEO to resolve alleged violations of AR 6:2. Members shall be chosen from faculty and staff employees who have received annual and ongoing training by IEEO related to sexual assault, domestic violence, dating violence, and stalking. A student is not permitted to serve on the Sexual Misconduct Hearing Board. Members serve one-year terms, which may be renewed for one additional year.
- I. *Sexual Misconduct Appeals Board (SMAB)* means the 3-person panel consisting of a chair and two (2) other members appointed to consider an appeal of a Sexual Misconduct Hearing Board's determination as to whether a student, student organization, or employee has violated AR 6:2 or of sanctions recommended by the Hearing Board.
1. For students, the SMAB will be chosen from the members of the University Appeals Board (*Governing Regulation XI*) who have received who have received annual and ongoing training by IEEO related to sexual assault, domestic violence, dating violence, and stalking.
 2. For employees the SMAB will be comprised of faculty and staff who have received annual and ongoing training by IEEO related to sexual assault, domestic violence, dating violence, and stalking.
 3. A student is not permitted to serve on the SMAB.
- J. *Student* means any person who is enrolled at the University. Student status continues whether or not the University's academic programs are in session. Student status includes those taking courses for credit or non-credit at the University, either full-time or part-time, while pursuing undergraduate, graduate, or professional studies. An individuals who withdraws after an alleged violation or who is living in the residence halls, although not enrolled at the University, is also considered a student.
- K. *Support Individual* means an advocate who may attend an informal meeting or formal hearing to provide advice, support, or guidance to either the respondent or the complainant. A support individual may not represent, speak on behalf of, delay, disrupt, or otherwise interfere with the proceedings of a student conduct meeting. An attorney may serve as a support individual,

although the attorney's participation is limited to the role of support individual as described herein.

- L. *University Activity* means any activity on or off University premises that is aided, authorized, initiated, sponsored, or supervised by the University or a registered student organization.
- M. *University Official* means any person employed or otherwise authorized by the University, performing assigned administrative or professional responsibilities.
- N. *University Premises* means all property, buildings, and facilities owned, leased, used, or controlled by the University (including adjacent streets and sidewalks).

III. INITIATING A COMPLAINT AND INVESTIGATION PROCESS

- A. *Filing a Complaint:* All complaints related to alleged violations of Sexual Harassment and Discrimination or Sexual Assault, Stalking and Relationship Violence, regardless of where the complaint is initially received, shall be referred to the IEEO for investigation. Individuals seeking confidential reporting (where individuals are not required to report incidents to IEEO) may go to the University's Violence Intervention and Prevention Center (VIP Center), University Counseling Center, or University Health Services (students).
- B. *Confidential Reporting:* Individuals may make a confidential complaint or report (where individuals receiving the complaint are not required to report incidents to IEEO) to the University Violence Intervention and Prevention Center (VIP Center), the University Counseling Center, or University Health Services (students only). Anonymous reports may be made to the UKPD; however, because police reports are public records under state law, UKPD cannot hold reports of sexual assault, stalking, dating violence, or domestic violence in confidence. In addition, certain individuals designated as Campus Security Authorities under AR 6:7 are required by law to report sex offences, stalking, and relationship violence, to the University Police or Division of Crisis Management and Preparedness. These reports are made for statistical purposes, without the inclusion of identifying information of the parties. (see AR 6:7, Policy on Disclosure of Campus Security and Crime Statistics)
- C. *Dual Reporting:* Violations of AR 6:2 may be both a violation of University policy and law, and as such, the University encourages complainants to make reports to both local law enforcement agencies (Lexington Police Department, University of Kentucky Police Department, or other appropriate local law enforcement agencies) and a University official. The result of an external criminal investigation does not impact whether a violation of University policy

has occurred. An external criminal investigation will not take the place of a University investigation, although such criminal investigation may supplement a University investigation. The University will not wait for the conclusion of a criminal investigation to begin conducting its own independent investigation, take interim measures to protect the University or any member of the University community, or when necessary, to initiate hearing procedures as outlined below.

D. Interim Suspension (Students)

1. In certain circumstances, the Vice President for Student Affairs (VPSA), may impose an interim suspension from University premises upon receiving a complaint and prior to the completion of the student conduct process. Upon taking such action, the VPSA or authorized representative shall immediately notify the chair of the UAB. The student shall notified in writing of, and the reasons for, the interim suspension. Interim suspension may be imposed to:
 - a. Ensure the safety and wellbeing of members of the University community or preservation of University property;
 - b. Ensure the student's own physical or emotional safety and wellbeing;
 - or
 - c. Ensure that normal operations of the University are not disrupted.
2. A student may appeal the decision of the VPSA to the University Appeals Board ("UAB") in writing within seven (7) business days. Interim suspension will remain in effect during any appeal. If requested in the written appeal, a student shall be given an opportunity to appear personally before the UAB within three (3) business days in order to discuss the following issues only:
 - a. The reliability of the information concerning the student's conduct, including the matter of his or her identity.
 - b. Whether the conduct and surrounding circumstances reasonably indicate that the continued presence of the student on University premises poses a substantial and immediate threat to himself or herself or to others or the stability and continuance of normal University functions.
3. A student under interim suspension shall be given an opportunity for a prompt disciplinary hearing within the University Disciplinary System.

E. Interim Suspension (Employees)

1. In certain circumstances, the dean (faculty), or appropriate unit administrator (staff), upon the recommendation of the IEEEO, may impose

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an interim suspension from University premises upon receiving a complaint and prior to the completion of the disciplinary process. The accused individual shall be notified in writing of, and the reasons for, the interim suspension. Interim suspension may be imposed to:

- a. Ensure the safety and wellbeing of members of the University community or preservation of University property;
 - b. Ensure the accused individual's own physical or emotional safety and wellbeing; or
 - c. Ensure that normal operations of the University are not disrupted.
2. An employee under temporary suspension shall be given an opportunity for a prompt hearing within these disciplinary procedures.
- F. *Other Interim Remedies Available:* Interim remedies that may be initiated at the beginning of the complaint process and are not dependent on the outcome of the case include, but are not limited to (as applicable):
1. Referral to on or off-campus resources, such as the VIP Center and counseling;
 2. Alteration of the housing (students) or workstation (employees) situation for the complainant or respondent;
 3. Removing a student from residential facilities or removing an employee from the work setting or University premises (See Interim Restriction or Suspension);
 4. Limitation on contact between parties (e.g. No-Contact Orders, No-Trespass Orders);
 5. Referral to academic support services, such as tutoring and testing accommodations (students);
 6. Adjustments to course schedules and academic deadlines (students) or work schedules (employees);
 7. Other appropriate remedies based on each individual situation.
- G. *Retaliation:* University policy prohibits retaliation against any party cooperating in the investigation of an alleged violation of University Policy or proceeding. Retaliation includes any harassment, intimidation, threats or adverse action against any complainant or individual as a result of participation in a complaint. Retaliatory behavior is not limited to behavior by the accused individual, and covers behavior by his or her associates, as well as third parties. Retaliation may be reported to IEEO, the Office of Student Conduct, Human Resources, or Faculty Advancement and is considered an independent allegation that may lead to interim measures or disciplinary action (See *Governing Regulation XIV*).

IV. NOTICE AND ADMINISTRATIVE MEASURES

- A. The IEEO shall notify the respondent via a Notice of Alleged Violation (hereafter referred to as “notice”) of the alleged violation. The Notice shall 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.
- B. Notices shall be sent to the respondent’s official University email address no less than two (2) business days prior to a scheduled meeting. For registered student organizations, the notice shall be mailed to the organization’s representative, typically the President on file with the Office of Student Involvement. Failure to read and comply with the notice is not suitable grounds for an appeal.
- C. The IEEO schedules meetings and hearings. The meeting time and date of the pre-hearing meeting or formal hearing is determined by the respondent’s class or work schedule and the availability of the Title IX Investigator, Hearing Board members, and witnesses. A meeting or formal hearing will only be rescheduled for good cause.

V. INFORMAL RESOLUTION OPTION

Pre-Hearing Meeting: An IEEO representative will meet with the complainant and respondent separately to: (1) review the investigative report; (2) discuss the hearing process; and (3) receive input from the complainant and respondent regarding sanctions. With the exception of support individuals, Pre-Hearing Meetings are closed meetings. If the respondent chooses to resolve the allegation during the Pre-Hearing Meeting, the case is closed. If the allegation is not resolved during the Pre-Hearing Meeting, the case shall be referred to a hearing for formal resolution by members of a HB.

VI. FORMAL HEARING PROCEDURES

Formal hearings shall be conducted by a Sexual Misconduct Hearing Board (HB) according to the following procedures:

- A. Given the nature of these incidents, and the impact on the overall University community, a representative from Student Conduct, Human Resources, or Faculty Advancement will serve as a complainant on behalf of the University. The rights of this representative shall be same as that of the complainant.
- B. The complainant and the respondent shall submit to the Chair of the Hearing Board any information s/he wishes to present at the hearing, the name of his/her support person(s) and if s/he is an attorney, preliminary list of questions, and a possible list of witnesses six (6) business days prior to the hearing. Absent good cause, as determined by the Chair of the Hearing

Board, the parties may not submit information for the hearing after this deadline. Upon the receipt of information from both parties, the Chair will review the information submitted to eliminate any redundant or prejudicial information.

- C. After review by the Chair, the IEEO shall be responsible for the creation of the Formal Hearing file. Copies of the Formal Hearing file shall be made available to all parties and the Hearing Board members at least three (3) business days prior to the hearing and will contain the Title IX investigator's report, list of witnesses, preliminary questions submitted by parties, and any other related information.
- D. The IEEO will arrange the attendance of possible witnesses who are members of the University community, if reasonably possible. Witnesses participate in a hearing to provide information to and answer questions from the Hearing Board regarding the personal knowledge they have of the incident at hand.
- E. The complainant and the respondent have the right to be assisted by a support individual(s) of his/her choice and at his/her own expense. Support individual(s) are not permitted to speak or to participate directly in any hearing.
- F. The complainant, respondent, and their support individual(s), if any, are allowed to attend the entire portion of the hearing, excluding deliberations.
- G. The Chair, in consultation with the Hearing Board members, makes the final decision on all procedural questions.
- H. The Chair is responsible for maintaining order and determining the sequence of events during a hearing. Any person who fails to comply with procedures during the hearing or disrupts or obstructs the hearing may be directed to leave the hearing by the Chair.
- I. After all pertinent information has been reviewed by the Hearing Board, the Hearing Board will determine whether the respondent has violated any section of AR 6:2 which the respondent is alleged to have violated.
- J. The Hearing Board's determination shall be made on the basis of the preponderance of evidence standard. Preponderance of Evidence means that it is more likely than not (50.1% certain) that the Respondent is responsible for the alleged act.
- K. All hearings, with the exception of the deliberations, shall be recorded. The record is the property of the University.

- L. If a respondent or complainant fails to appear before the Hearing Board, the information regarding the allegation shall be presented and a determination of finding shall be made in the respondent's absence.
- M. A respondent or complainant may request to postpone the hearing for reasonable cause. The respondent or complainant shall submit to the IEEO a written request for postponement, including the reason(s) for the request, no later than five (5) business days prior to the scheduled hearing unless an unforeseen circumstance occurs. Delays of a meeting or hearing are not normally allowed because of the scheduling conflicts of a support individual. The IEEO may accept or deny the request, after considering the nature of both the respondent's or complainant's request and the incident at hand.
- N. A complainant or respondent may request reasonable accommodations to address concerns for the personal safety that may include providing separate facilities, using a visual screen, or by permitting participation by telephone, videophone, closed circuit television, video conferencing, videotape, audio tape, written statement, or other appropriate means.
- O. In each case in which a Hearing Board determines the respondent is responsible for a violation, the Hearing Board shall recommend sanctions to the Dean of Students (students) or the appropriate dean, director, or unit administrator (employees). The sanctions shall be ultimately determined and imposed by the Dean of Students (students) or the appropriate dean, director, or unit administrator (employees); however, the Hearing Board's recommendation shall be considered in determining and imposing sanctions. The Dean of Students, dean, director, or unit administrator are not limited to sanctions recommended by the Hearing Board.
- P. After the Hearing Board has determined whether the respondent is responsible or not responsible for the alleged policy violation, the Dean of Students (students) or the appropriate dean, director, or unit administrator (employees) shall provide to the Respondent a written outcome describing the rationale for the decision and any sanctions imposed. The written outcome shall be sent to both the respondent and complainant via the individual's University email address no more than seven (7) business days following a hearing, unless circumstances exist that would delay issuance of the written outcome.

VII. RECOMMENDED SANCTIONS

The chart below outlines the recommended sanctions for specific violations of AR 6.2. A full description of the available sanctions can be found in the *Code of Student Conduct*, *Human Resources Policies and Procedures*, or the *Faculty Disciplinary Policy*, as applicable. Additional sanctions not specifically listed below may also be imposed when appropriate.

| | Recommended Range of Sanctions (STUDENTS) | Recommended Range of Sanctions (EMPLOYEES) |
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| Sexual Assault | Suspension, Dismissal, Revocation of Admission and/or Degree | Suspension, Termination |
| Dating Violence or Domestic Violence | Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, Revocation of Admission and/or Degree | Probation, Counseling Assessment, Suspension, Termination |
| Stalking | Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, Revocation of Admission and/or Degree | Probation, Written Warning, Counseling Assessment, Suspension, Termination |

VIII. APPEALS TO THE UNIVERSITY SEXUAL MISCONDUCT APPEALS BOARD (SMAB)

A student (respondent or complainant) may appeal the decision and sanction if the sanction is interim suspension, social suspension, disciplinary suspension, or disciplinary expulsion from the University. An employee (respondent or complainant) may appeal the decision and sanction if the sanction is suspension or termination from the University.

- A. A respondent and complainant and their support individuals have the right to review the hearing file, including any recording of the hearing, in preparation for filing an appeal.
- B. For students, the written appeal shall be submitted to the Chair of the UAB or postmarked, if mailed to the Chair, within seven (7) business days of the receipt of the decision rendered by the Panel. The Chair of the UAB will assign the appeal to the UAB SMAB.
- C. For employees, the written appeal shall be submitted to IEEO or postmarked, if mailed, within seven (7) business days of the receipt of the decision rendered by the Hearing Board. IEEO will assign the appeal to a SMAB.
- D. *Jurisdiction:* The SMAB has appellate jurisdiction over appeals related to violations of AR 6:2. The appeal does not include a new hearing, but rather it is a review of the original hearing. The appeal is limited to:
 1. Whether deviations in procedures were significantly prejudicial (i.e. would alter the outcome of the hearing). In such cases, the SMAB shall determine whether the hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures providing the

complainant a reasonable opportunity to prepare and to present information regarding the alleged violation, and providing the respondent a reasonable opportunity to prepare and to present a response to those allegations.

2. Whether the sanction(s) imposed was appropriate for the violation for which the respondent was found responsible.
 3. Whether new information, or other relevant facts not presented at the hearing, would have altered the outcome of the hearing and such information and/or facts were not known to the person appealing at the time of the original hearing.
- E. *Notification of Appeal:* If the respondent or complainant files an appeal, the IEEO and/or the other party involved in the complaint shall be notified of the appeal and provided an opportunity to file a response. A response shall be filed within five (5) business days of being notified of the appeal.
- F. *Appeal Record:* In considering an appeal, the SMAB shall conduct a review of the existing documentary and verbatim record, including but not limited to:
1. The hearing file;
 2. The written recommendations of the Hearing Board;
 3. The recording or transcript of the formal hearing;
 4. The letter of appeal; and
 5. Response from the IEEO and/or the other party involved in the complaint, if any.
- G. *SMAB Decision:* Upon review of all of the information, the SMAB has the authority to do one of the following:
1. Uphold the findings and recommendations made by the Hearing Board;
 2. In the cases of social suspension, suspension, or expulsion (students), or suspension or termination (employees) modify the sanction; or
 3. Remand the case back to a Hearing Board.
- H. *Remanded Cases:* An appeal can only be remanded to a Hearing Board due to procedural error or new information.
1. For issues of procedural error, the IEEO shall appoint a new hearing panel to reconsider the referral; or
 2. For issues of new information, the IEEO shall instruct the original hearing panel to resume the hearing.
- I. *SMAB Decision:* The SMAB Chair shall communicate the outcome to the appealing party, the IEEO, the Dean of Students (students), the appropriate dean, director, or unit administrator (employees) and when appropriate, the other participating student or employee.

1. For students, the decision of the SMAB, as a subset of the UAB, is final and binding upon all involved. (see *GR XI, Student Affairs*)
2. For employees, the decision of the SMAB may be appealed pursuant to applicable law (KRS 164.230) and/or University regulations *GR I.F* and *GR X.B.1.f*.