



# Policy and Procedures for Addressing and Resolving Allegations of Sexual Assault, Stalking, Dating Violence, and Domestic Violence

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## I. Introduction

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This *Administrative Regulation* establishes the University's policies and procedures for addressing and resolving allegations of sexual assault, stalking, dating violence, domestic violence, sexual exploitation, complicity in the commission of any act prohibited by this regulation, and retaliation against a person for the good faith reporting of any of these forms of conduct or participation in any investigation or proceeding under this regulations. The University's Title IX Coordinator and the Office of Institutional Equity and Equal Opportunity (IEEO) administer this regulation.

The Title IX Coordinator and the IEEO administer two separate policies that address sexual misconduct and other forms of discrimination and harassment:

- *Administrative Regulation 6:1, "Policy on Discrimination and Harassment"*
- *Administrative Regulation 6:2, "Regulation on Sexual Assault, Stalking, and Intimate Partner Violence"*.

The University's Title IX Coordinator has discretion to determine which policy applies to reported behavior. Questions about which policy applies in a specific instance should be directed to the University's Title IX

## II. Policy

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The University of Kentucky is committed to providing a safe learning, living, and working environment for all members of the University community. Consistent with this commitment, the University prohibits sexual assault, stalking, domestic violence, dating violence, sexual exploitation, and complicity in the commission of any act prohibited by this regulation, and retaliation against a person for the good faith reporting of any of these forms of conduct or participation in any investigation or proceeding under this regulations (collectively, “prohibited conduct”). These forms of prohibited conduct are unlawful, undermine the character and purpose of the University, and will not be tolerated.

Employees or Students who violate this regulation may face disciplinary action up to and including termination or expulsion. The University will take prompt and equitable action to eliminate prohibited conduct, prevent its recurrence, and remedy its effects. The University conducts ongoing prevention, awareness, and training programs for Employees and Students to facilitate the goals of this regulation.

Every member of the University community is responsible for to 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 an act of prohibited conduct. The University will support and assist community members who take such actions.

## III. Scope

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- A. This *Administrative Regulation* applies to all members of the University community, including faculty, staff, students, visitors, volunteers, and registered student organizations.
- B. This regulation applies to any acts of sexual assault, stalking, dating or domestic violence that occur:
  - 1. On campus or any other University owned, leased, controlled, or operated location;
  - 2. During any activity off University premises if the activity is authorized, initiated, sponsored, aided, or supervised by the University or a registered student organization; or
- C. Outside the context of a University employment or education programs or activity, if 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. University faculty, staff, and students may always utilize services of the University’s Violence Intervention and Prevention Center (VIP) whether or not the accused is another student or employee.

## IV. Definitions

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The following definitions are for purposes of this regulation and are not intended to replace or summarize the Kentucky Penal Codes.

### A. Affirmative Consent

*Affirmative consent* means a voluntary expression of willingness, permission, or agreement to engage in specific sexual activity throughout a sexual encounter. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other to engage in the sexual

activity. Consent cannot be inferred from the absence of a "no"; an expression of consent, verbal or otherwise, must be obtained.

Consent cannot be granted by an individual who:

1. Is incapacitated by any drug or intoxicant;
2. Has been compelled by force or threat of force;
3. Is unaware that the act is being committed;
4. Is impaired because of a mental or physical condition;
5. Is coerced by supervisory or disciplinary authority; or
6. Is less than the statutory age of consent.

B. Campus Security Authority

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

C. Complaining Witness

*Complaining witness* means any person (or his or her proxy) alleging a violation(s) of this regulation. The University may designate a proxy complaining witness, or initiate proceedings without a formal complaint from the victim of an alleged violation of this regulation.

D. Complicity

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

E. Dating Violence

*Dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and

1. The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
2. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

F. Domestic Violence

*Domestic violence* means violence committed by:

1. A person who is a current or former spouse or intimate partner with the victim;
2. A person with whom the victim shares a child in common;

3. A person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner; or
4. Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws where the violence occurred.

G. Employee

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

H. Force or Coercion

*Force or coercion* means: (a) threats of serious physical, emotional, or psychological harm to or physical restraint against any person, or (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.

I. Incapacitation

*Incapacitation* means a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction). This regulation also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the consumption of alcohol or other incapacitating drugs. A person can be intoxicated without being incapacitated.

J. Physical Assault

*Physical assault* means threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person. Physical assault will be addressed under this policy if it involves sexual or gender-based harassment, intimate partner violence, or is part of a course of conduct under the stalking definition.

K. Preponderance of Evidence

*Preponderance of evidence* means that it is more likely than not (more than 50% certain) that the respondent is responsible for the alleged act.

L. Registered Student Organization

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

M. Respondent

A *respondent* is anyone against whom a complaint or allegation of prohibited conduct is made.

N. Responsible Employee

*Responsible employee* means any University employee who:

1. Has the authority to take action to redress prohibited conduct;

2. Who has been given the duty of reporting incidents of prohibited conduct or any other misconduct to the Title IX coordinator or designee; or
3. Who an individual reasonably believes has this authority or duty.

#### O. Retaliation

*Retaliation* means any adverse action taken against a person for making a good faith report of prohibited conduct or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation may be present even where there is a finding of “no responsibility” on the allegations of prohibited conduct. 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 does not include good faith actions lawfully pursued in response to a report of prohibited conduct. Retaliation should be reported to the Title IX Coordinator.

#### P. Sanction

*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.

#### Q. Sexual Assault

1. *Sexual assault* means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s Uniform Crime Reporting system. A sex offense is any act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
  - (a) *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 another person, without the consent of the victim.
  - (b) *Fondling* is defined as the touching of the private parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental incapacity.
  - (c) *Incest* is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - (d) *Statutory Rape* is defined sexual intercourse with a person who is under the statutory age of consent.
2. *Sexual assault* also includes all sex offenses as stated in Kentucky Revised Statutes 510.010 through 510.140.

#### R. Sexual Exploitation

*Sexual exploitation* means the use of 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.

Examples of Sexual Exploitation include but are not limited to the following:

- 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;

- Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or livestreaming of images);
- 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);
- Recording or photographing private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
- Disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
- Prostituting another person; and
- Exposing another person to a sexually transmitted infection or virus without the other's knowledge.

## S. Stalking

1. *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.
  - (a) Course of conduct means two 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.
  - (b) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
  - (c) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
2. Stalking includes "*cyber-stalking*," a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.
3. Examples of stalking include, but are not limited to:
  - Following a person;
  - Appearing at their home, place of business, or classrooms;
  - Making harassing phone calls;
  - Mailing written messages, sending or posting electronic messages;
  - Leaving messages or objects at their home, place of business, vehicle, or classroom; and
  - Vandalizing personal property.

## T. Student

*Student* means any person who is enrolled at the University and has not completed a program of study in which she or he is enrolled. 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 individual 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.

## U. Support Person

*Support person* means an advocate who may attend an informal meeting or formal hearing to provide advice, support, or guidance to either the respondent or the complaining witness. A support person may

not represent, speak on behalf of, delay, disrupt, or otherwise interfere with the proceedings of a 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.

#### V. Title IX Coordinator

The *Title IX Coordinator* is the University official responsible for investigating complaints of prohibited conduct, resolving potential violations informally, facilitating the hearing process, and recommending appropriate sanctions when violations are confirmed.

#### W. University Official

*University official* means any person employed or otherwise authorized by the University, performing assigned administrative or professional responsibilities.

#### X. University Premises

*University premises* means all property, buildings, and facilities owned, leased, used, or controlled by the University (including adjacent streets and sidewalks).

## V. Prohibited Acts

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

1. Engaging in sexual assault, stalking, dating violence, domestic violence, sexual exploitation, and complicity in the commission of any act prohibited by this regulation;
2. Retaliating in any manner against an individual who makes a complaint of sexual assault, stalking, dating violence, or domestic violence;
3. Interfering with procedures to investigate or redress a complaint of sexual assault, stalking, dating violence, or domestic violence; and
4. Making an intentionally false accusation of prohibited conduct through the University's procedures.

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

## VI. Reporting Complaints

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A. Any University employee who witnesses or is made aware of an incident of prohibited conduct shall report it to the University Police or the Title IX Coordinator as soon as possible.

B. The University strongly encourages prompt reporting by non-employees, including victims, witnesses, and those who are made aware of incidents of prohibited conduct. Reports may be made to the University of Kentucky Police, police in the location where the violence occurred, University Violence Intervention and Prevention Center, the Dean of Students Office, the Title IX Coordinator, a Campus Security Authority, or to any University official. An incident may be reported without filing a written complaint.

C. Individuals designated as Campus Security Authorities are required by law to report certain crimes, including alleged sex offenses, 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. For reporting responsibilities of individuals designated as Campus Security Authorities, see *Administrative Regulation 6:7, Policy on Disclosure of Campus Security and Crime Statistics*.

- D. Confidential reporting is allowed to the University Violence Intervention and Prevention Center and the University Counseling Center or Health Services when receiving counseling or medical services. Anonymous reports may also be made to the UKPD; however, because police reports are public records under state law, UKPD cannot hold reports of prohibited conduct in confidence.
- E. The University provides information on pursuing criminal or other legal action, health care, counseling, and other support services available for students, faculty, staff, and visitors who have made a complaint of prohibited conduct.
- F. The University makes a good faith effort to resolve complaints of prohibited conduct within sixty (60) days of receiving the report, however the proceedings timeframe allows for extensions for good cause with notice to the complaining witness and the respondent of the delay and the reason for the delay.
- G. The University encourages individuals who make a complaint of prohibited conduct, regardless of where the complaint is made, to also contact University Violence Intervention and Prevention Center (<http://www.uky.edu/StudentAffairs/VIPCenter/>) for assistance in accessing and navigating services, resources, and referrals both on and off campus.
- H. Individuals who experience sexual assault, dating violence, or domestic violence are strongly encouraged to seek medical attention and be examined for physical injury, the presence of sexually transmitted diseases, or pregnancy as a result of rape.

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

**Important University Contact Numbers:**

UK Police .....	911 from a UK phone; or #UKPD from your cell phone
Violence Intervention and Prevention Center.....	(859) 257-2884; or (859) 257-3564
Office of the Dean of Students.....	(859) 257-3754
Counseling and Testing.....	(859) 257-8701
University Health Services.....	(859) 323-5823
UK HealthCare.....	(859) 257-1000

The University's Title IX Coordinator and Deputy Title IX Coordinator can be contacted during office hours as follows:

**Patty Bender**, Title IX Coordinator  
13 Main Building  
859-257-8927  
[pbender@uky.edu](mailto:pbender@uky.edu)

**Martha Alexander**, Deputy Title IX Coordinator  
13 Main Building  
859-257-8927  
[Martha.alexander@uky.edu](mailto:Martha.alexander@uky.edu)



## VII. Rights of the Complaining Witness and the Respondent

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- A. The complaining witness has the right to choose whether or not to file a complaint with the University. However, when the University is made aware of an allegation of prohibited conduct, it must investigate and take appropriate action.
- B. In addition to pursuing administrative penalties and remedies, the complaining witness maintains the right to pursue criminal or other legal action.
- C. Both the complaining witness and the respondent have the right:
  - 1. To be treated with respect by University officials;
  - 2. To take advantage of campus support resources;
  - 3. To experience a safe living, educational, and work environment;
  - 4. To have up to two (2) support persons present during meetings and hearings;
  - 5. To refuse to have an allegation resolved through conflict resolution procedures;
  - 6. To receive amnesty for certain student misconduct, such as alcohol or drug violations, that occurred ancillary to the incident;
  - 7. To be free from retaliation for reporting violations of this policy or cooperating with an investigation;
  - 8. To have complaints heard in accord with University procedures;
  - 9. To be informed in writing of the outcome/resolution of the complaint, sanctions where permissible, and the rationale for the outcome where permissible;
  - 10. To have minimal interaction or contact with the responding party or complaining party; and
  - 11. To request interim remedies from the University to ensure minimal interaction or contact with the responding or complaining party.

## VIII. Corrective Actions and Disciplinary Procedures

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- A. For students, faculty, and staff, the University utilizes the procedures outlined in the Appendix to address and resolve allegations of prohibited conduct.
- B. The recommended range of sanctions for students are in accordance with the Appendix and include disciplinary probation, counseling assessment, social restrictions, social suspension, suspension, dismissal, revocation of admission, or revocation of degree. A recommended sanction of revocation of a degree shall be referred to the Board of Trustees for final action. (See KRS 164.240) Additional sanctions also may be imposed when appropriate. Both the complaining witness and the respondent shall be informed of the outcome of the corrective action or disciplinary process.
- C. The recommended range of sanctions for faculty and staff are in accordance with the Appendix and include suspension, counseling, or termination of employment. Additional sanctions also may be imposed when appropriate. Both the complaining witness and the respondent shall be informed of the outcome of the corrective action or disciplinary process.

D. Both parties have the right to appeal the decision as detailed in the Appendix.

## IX. Education

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

## References and Related Materials

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

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

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

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

U.S. Department of Education, Dear Colleague Letter GEN-14-13  
KRS 164.240, Degrees Granted by Trustees

KRS 510.010 - 510.140, Sexual Offenses

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

## Revision History

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1/26/2009, 9/30/2014 (Interim), 12/3/2014, 6/19/2015 (addition of procedures)

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

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

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- I. INTRODUCTION
- II. DEFINITIONS
- III. INITIATING A COMPLAINT AND INVESTIGATION PROCESS
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- VII. FORMAL HEARING PROCEDURES
- VIII. RECOMMENDED SANCTIONS
- IX. APPEALS TO THE SEXUAL MISCONDUCT APPEAL BOARD (SMAB)
- X. AMENDMENT OF PROCEDURES

## I. INTRODUCTION

These procedures are applicable to allegations, investigations, and adjudication of cases involving *Administrative Regulation (AR) 6:2, Policy and Procedures for Addressing and Resolving Allegations of Sexual Assault, Stalking, Dating Violence, and Domestic Violence*. These procedures apply to University employees (faculty and staff) and students. These procedures supersede procedures for student misconduct found in the Student Code of Conduct and procedures for employee misconduct found in Human Resources Policies and Procedures and any other Administrative Regulations; however, they do not supersede faculty termination procedures found in Governing Regulation X.

Allegations related to *AR 6:1, Policy on Discrimination and Harassment* are normally adjudicated under the Code of Student Conduct for students, and Governing Regulations, Administrative Regulations, and Human Resources Policy and Procedure for employees. However, depending on the circumstances, the Title IX Coordinator may refer allegations related to discrimination and harassment for adjudication under these procedures.

## II. DEFINITIONS

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

### A. Affirmative Consent

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

Consent cannot be granted by an individual who:

1. Is incapacitated by any drug or intoxicant;
2. Has been compelled by force or threat of force;
3. Is unaware that the act is being committed;
4. Is impaired because of a mental or physical condition;
5. Is coerced by supervisory or disciplinary authority; or
6. Is less than the statutory age of consent.

B. Campus Security Authority

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

C. Complaining Witness

*Complaining witness* means any person (or his or her proxy) alleging a violation(s) of AR 6:2. The University may designate a proxy complaining witness, or initiate proceedings without a formal complaint from the victim of an alleged violation of this regulation.

D. Complicity

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

E. Dating Violence

*Dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and

1. The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
2. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

F. Domestic Violence

*Domestic violence* means violence committed by:

1. A person who is a current or former spouse or intimate partner with the victim;
2. A person with whom the victim shares a child in common;
3. A person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner; or
4. Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws where the violence occurred.

G. Employee

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

H. Force or Coercion

*Force or coercion* means: (a) threats of serious physical, emotional, or psychological harm to or physical restraint against any person, or (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.

I. Incapacitation

*Incapacitation* means a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This regulation also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the consumption of alcohol or other incapacitating drugs. A person can be intoxicated without being incapacitated.

J. Physical assault

*Physical assault* means threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person. Physical assault will be addressed under this policy if it involves sexual or gender-based harassment, intimate partner violence, or is part of a course of conduct under the stalking definition.

K. Preponderance of Evidence

*Preponderance of evidence* means that it is more likely than not (more than 50% certain) that the respondent is responsible for the alleged act.

L. Registered Student Organization

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

M. Respondent

A *respondent* is anyone against whom a complaint or allegation of prohibited conduct is made.

N. Responsible Employee

*Responsible employee* means any University employee who:

1. Has the authority to take action to redress prohibited conduct;
2. Who has been given the duty of reporting incidents of prohibited conduct or any other misconduct to the Title IX coordinator or designee; or
3. Who an individual reasonably believes has this authority or duty.

## O. Retaliation

*Retaliation* means any adverse action taken against a person for making a good faith report of prohibited conduct or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation may be present even where there is a finding of “no responsibility” on the allegations of prohibited conduct. 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 does not include good faith actions lawfully pursued in response to a report of prohibited conduct. Retaliation should be reported to the Title IX Coordinator.

## P. Sanction

*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.

## Q. Sexual Assault

1. *Sexual assault* means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s Uniform Crime Reporting system. A sex offense is any act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
  - (a) 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 another person, without the consent of the victim.
  - (b) Fondling is defined as the touching of the private parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental incapacity.
  - (c) Incest is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - (d) Statutory Rape is defined sexual intercourse with a person who is under the statutory age of consent.
2. Sexual assault also includes all sex offenses as stated in Kentucky Revised Statutes 510.010 through 510.140.

## R. Sexual Exploitation

*Sexual exploitation* means the use of 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.

Examples of Sexual Exploitation include but are not limited to the following:

- 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;
- Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or livestreaming of images);
- 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);

- Recording or photographing private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
- Disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
- Prostituting another person; and
- Exposing another person to a sexually transmitted infection or virus without the other's knowledge.

S. Sexual Misconduct Hearing Panel Pool

*Sexual Misconduct Hearing Panel Pool* means the twenty-one (21) individuals appointed by the President from the faculty and staff to serve on Sexual Misconduct Hearing Panels.

T. Sexual Misconduct Hearing Panel (Hearing Panel)

*Sexual Misconduct Hearing Panel (Hearing Panel)* means a 3-person hearing panel selected by the Hearing Officer from the Sexual Misconduct Hearing Panel Pool to resolve alleged violations of AR 6:2.

U. Sexual Misconduct Appeals Board (SMAB)

*Sexual Misconduct Appeals Board (SMAB)* means the ten (10) individuals and one (1) Chair appointed by the President from the faculty and staff to consider appeals of a Hearing Panel's determination as to whether a student, student organization, or employee has violated AR 6:2 or of recommended sanctions.

V. Stalking

1. *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.
  - (a) Course of conduct means two 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.
  - (b) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
  - (c) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
2. Stalking includes "*cyber-stalking*," a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.
3. Examples of stalking include, but are not limited to:
  - Following a person;
  - Appearing at their home, place of business, or classrooms;
  - Making harassing phone calls;
  - Mailing written messages, sending or posting electronic messages;
  - Leaving messages or objects at their home, place of business, vehicle, or classroom; and
  - Vandalizing personal property.

W. Student

*Student* means any person who is enrolled at UK and who has not completed a program of study in which he or she is enrolled. Student status continues whether or not UK's academic programs are in session. Student status includes those taking courses for credit or non-credit at UK, either full-time or part-time, while pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the Code or who are living in the residence halls, although not enrolled at UK, are also considered Students.

X. Support Person

*Support person* means an advocate who may attend an informal meeting or formal hearing to provide advice, support, or guidance to either the respondent or the complaining witness. A support person may not represent, speak on behalf of, delay, disrupt, or otherwise interfere with the proceedings of a 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.

Y. Title IX Coordinator

The *Title IX Coordinator* is the University official responsible for investigating complaints of prohibited conduct, resolving potential violations informally, facilitating the hearing process, and recommending appropriate sanctions when violations are confirmed.

Z. University Official

*University official* means any person employed or otherwise authorized by the University, performing assigned administrative or professional responsibilities.

AA. University Premises

*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 AR 6:2, regardless of where the complaint is initially received, shall be referred to the Title IX Coordinator for investigation.
- B. *Confidential Reporting:* Individuals may make a confidential complaint or report (where individuals receiving the complaint are not required to report incidents to the Title IX Coordinator) to the University Violence Intervention and Prevention Center (VIP Center), 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 shall not take the place of a University investigation, although such criminal investigation may supplement a University investigation. The University shall 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. *Investigation*: Upon receipt of a complaint, the Title IX Coordinator (or designee) shall conduct an investigation to determine if there is enough information to support and alleged violation of AR 6:2 and, if so, which violation(s) occurred.

#### IV. **INTERIM REMEDIES**

##### A. *Interim Suspension (Students)*

- A. In certain circumstances, the Title IX Coordinator), may impose an interim suspension from University premises upon receiving a complaint and prior to the completion of the disciplinary process. Upon taking such action, the Title IX Coordinator or authorized representative shall immediately notify the chair of the SMAB. The student 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 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 interim suspension to the SMAB in writing within seven (7) business days of the notice of the interim suspension. Interim suspension shall remain in effect during the appeal. If requested in the written appeal, a student shall be given an opportunity to appear personally before the SMAB within three (3) business days of filing the appeal 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 in accordance with these procedures.

##### B. *Interim Suspension (Employees)*

1. In certain circumstances, the appropriate unit administrator, upon the recommendation of the Title IX Coordinator, may impose 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. Salary shall be continued during the period of suspension. Decisions on faculty suspension shall be made in accordance with GR X.B.f(3)

##### C. *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:

1. Referral to on- or off-campus resources, such as the VIP Center or counseling;
2. Alteration of the housing (students), workplace or workstation (employees) situation for the complaining witness 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.

Interim remedies listed above in C.1-7 are not subject to appeal.

## **V. NOTICE AND ADMINISTRATIVE MEASURES**

- A. The Title IX coordinator shall notify the respondent in writing 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 or remedies.
- B. Notices shall be sent to the respondent's official University email address or last known mailing 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 Title IX Coordinator schedules meetings and hearings. The meeting time and date of the pre-hearing meeting or formal hearing is determined by the respondent's and complaining witness' class or work schedule and the availability of the Title IX Investigator, Hearing Panel members, and other witnesses. A meeting or formal hearing shall only be rescheduled for good cause.

## **VI. INFORMAL RESOLUTION OPTION**

*Pre-Hearing Meeting:* The Title IX Coordinator or representative shall meet with the involved parties to: (1) review the investigative report; (2) discuss the hearing process; (3) receive input from the involved parties regarding sanctions; and (4) attempt to resolve the matter without conducting a hearing. With the exception of support individuals, pre-hearing meetings are closed meetings. If the respondent chooses to resolve the allegation during the meeting, the case is closed and the appropriate unit administrator(s) shall be notified. If the complaining witness does not accept the informal resolution, or if the allegation is not resolved during the meeting, the case shall be referred to the Hearing Officer for formal resolution by a Hearing Panel.

## **VII. FORMAL HEARING PROCEDURES**

- A. *Sexual Misconduct Hearing Panel Pool:* The President shall appoint up to twenty-one (21) individuals from the faculty and staff to serve as members of the Sexual Misconduct Hearing Panel Pool. Members shall receive annual training by the Title IX Coordinator on issues related to sexual assault, domestic violence, dating violence, and stalking. Students are not permitted to serve.
- B. *Hearing Officer:* The President shall appoint an individual learned in the law to serve as the facilitator of hearings involving alleged violations of AR 6:2. The Hearing Officer shall be trained in issues related to sexual assault, domestic violence, dating violence, and stalking. The Hearing Officer convenes and

presides at all meetings of the Hearing Panel but does not vote as a member of the Panel. The Hearing Officer rules on all questions of law, whether substantive, evidentiary, or procedural.

- C. *Sexual Misconduct Hearing Panel*: Once a case is referred to the Hearing Officer for a formal hearing, the Hearing Officer selects three (3) members at random from the Sexual Misconduct Hearing Panel Pool.
- D. *Hearings*: Formal hearings shall be conducted by the Hearing Panel according to the following procedures:
1. Given the nature of these incidents, and the impact on the overall University community, a representative from the University shall present the case on behalf of the University. The rights of this representative shall be same as those of the complaining witness. The burden of proof shall rest on the University.
  2. The University and the respondent shall submit to the Hearing Officer any information they wish to present at the hearing, the name(s) of support person(s) and whether the support person 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 Hearing Officer, the parties may not submit information for the hearing after this deadline. Upon the receipt of information from both parties, the Hearing Officer shall review the information submitted to eliminate any redundant, irrelevant, or prejudicial information.
  3. A respondent or complainant may request to postpone the hearing for reasonable cause. The respondent or complainant shall submit to the Hearing Officer 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 scheduling conflicts of a support individual. The Hearing Officer may accept or deny the request, after considering the nature of the request and the incident at issue.
  4. The Title IX Coordinator shall arrange the attendance of witnesses who are members of the University community, if reasonably possible. The involved parties are responsible for arranging the attendance of witnesses who are not members of the University community.
  5. The Title IX Coordinator, in consultation with the Hearing Officer, shall create the formal hearing file. Copies of the formal hearing file shall be made available to all parties and the Hearing Panel members at least three (3) business days prior to the hearing and shall contain the Title IX investigator's report, list of witnesses, preliminary questions submitted by parties, and any other related information.
  6. Both the respondent and the University shall have the right to call relevant and necessary witnesses. Witnesses participate in a hearing to provide information to and answer questions from the Hearing Panel regarding the personal knowledge they have of the incident at issue. The members of a Hearing Panel may ask questions of the parties and all witnesses. The respondent and the University representative (not the advisors) shall also be given an opportunity to examine and cross-examine witnesses who testify at the hearing, except that the complaining witness and the respondent may not personally cross-examine each other. Instead, they may submit questions to the Hearing Officer to ask the questions on their behalf. The Hearing Officer shall screen the questions submitted, and only ask those questions deemed appropriate and relevant to the case.
  7. Witnesses other than the complaining witness shall be excluded from hearings, except for the period of their own testimony.
  8. The complaining witness and the respondent have the right to be assisted by up to two (2) support person(s) of their choice and at their own expense. Support person(s) may communicate privately

with the person they support during the hearing, but are not permitted to participate directly in any hearing.

9. The hearing shall be closed to the public. The complaining witness, respondent, and their support person(s), if any, are allowed to attend the entire portion of the hearing, excluding deliberations.
10. The Hearing Officer is responsible for maintaining order and determining the sequence of events during a hearing. The Hearing Officer may direct any person who fails to comply with procedures during the hearing or disrupts or obstructs the hearing to leave the hearing.
11. All questions of law, whether substantive, evidentiary, or procedural, shall be addressed to and ruled upon by the Hearing Officer.
12. If a respondent or complaining witness fails to appear before the Hearing Panel without good cause, the information regarding the allegation shall be presented and a determination of finding shall be made in the respondent's absence.
13. The complaining witness, respondent, or a witness 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. However, no accommodation shall violate the due process rights of the Respondent.
14. After the Hearing Panel has reviewed the evidence presented at the hearing, the Panel shall determine whether the respondent has violated any section of AR 6:2.
15. The Hearing Panel'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 (more than 50% certain) that the Respondent is responsible for the alleged act.
16. When a Hearing Panel determines the respondent is responsible for a violation of AR 6:2, the Panel shall immediately convene a supplemental proceeding to determine a recommended sanction(s). During the supplemental proceeding, both the respondent and the complainant may submit relevant evidence or make relevant statements regarding the appropriateness of a specific sanction. The past disciplinary record of the respondent shall only be supplied to the Hearing Panel during the supplemental proceeding to consider sanctions.
17. After the hearing, the Hearing Panel shall prepare a written summary of its findings of fact, determination of responsibility, recommended sanctions if any, and an explanation of the rationale for the decision. The report shall be submitted to the University representative, the Dean of Students (for students) or the appropriate unit administrator (for employees), and the involved parties no more than seven (7) business days following a hearing, unless circumstances exist that would delay issuance of the written outcome.
18. The sanctions shall be ultimately determined and imposed by the Dean of Students (students) or the appropriate unit administrator (employees); however, the Panel's recommendation shall be considered in determining and imposing sanctions. The Dean of Students, and unit administrators are not limited to sanctions recommended by the Hearing Panel; however, if the Dean of Students or unit administrator rejects or modifies the Hearing Panel's recommendation, they shall provide reasons in writing to the Hearing Panel and the involved parties.
19. All hearings, with the exception of the deliberations, shall be recorded. The recording is the property of the University.

## **VIII. RECOMMENDED SANCTIONS**

The chart below outlines the recommended sanctions for specific violations of AR 6.2. 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 Assault</b>	Suspension, Dismissal, Revocation of Admission and/or Degree	Suspension, Termination
<b>Dating Violence or Domestic Violence</b>	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, Revocation of Admission and/or Degree	Probation, Counseling Assessment, Suspension, Termination
<b>Stalking</b>	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, Revocation of Admission and/or Degree	Probation, Written Warning, Counseling Assessment, Suspension, Termination

## **IX. APPEALS TO THE UNIVERSITY SEXUAL MISCONDUCT APPEALS BOARD (SMAB)**

- A. *Composition:* The SMAB consists of ten (10) individuals plus a Chair, appointed annually by the President from the faculty and staff to consider appeals of a Hearing Panel's determination as to whether a violation of AR 6:2 occurred, or of recommended sanctions. Members may be reappointed. The Chair shall be a person learned in the law. The Chair and members of the SMAB shall receive training from the Title IX Coordinator in matters related to sexual assault, domestic violence, dating violence, and stalking. For allegations involving students the SMAB serves in place of the University Appeals Board.
- B. *Appeal:* A respondent or complaining witness may appeal the decision and/or sanction to the SMAB.
1. All appeals shall be submitted in writing to the Chair of the SMAB, or postmarked if mailed, within seven (7) business days of the receipt of the written decision rendered by the Hearing Panel.
  2. The Chair of the SMAB and two (2) members of the SMAB chosen by the Chair shall consider the appeal. The appeal does not include a new hearing, but rather it is a review of the original hearing. (See Section F below)
  3. A respondent and complaining witness and their support individuals have the right to review the hearing file, including any recording of the hearing, in preparation for filing an appeal.
- C. *Jurisdiction:* The SMAB has appellate jurisdiction over appeals related to violations of AR 6:2 The appeal is limited to:
1. Whether the hearing was conducted in accordance with the principles of due process. In such cases, the SMAB shall determine whether the hearing was conducted fairly in light of the charges and information presented, and consistent with prescribed procedures providing the complaining witness 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. Specifically, the SMAB will determine whether the factual findings were clearly erroneous. In reviewing legal conclusions, the review is de novo.
  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 complaining witness files an appeal, the Title IX Coordinator, the University representative and 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 Panel;
    3. The recording or transcript of the formal hearing;
    4. The letter of appeal; and
    5. Responses from the Title IX Coordinator, University representative, and 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 Panel;
    2. Modify the Sanction; however, the SMAB may not increase a penalty.; or
    3. Remand the case back to a Hearing Panel.
  - H. *Remanded Cases:* An appeal can only be remanded to a Hearing Panel due to procedural error or new information.
    1. For issues of reversible procedural error, the Hearing Officer shall appoint a new Hearing Panel to reconsider the case; or
    2. For issues of new information, the original Hearing Panel resumes the hearing.
  - I. *SMAB Decision:* The SMAB Chair shall communicate the outcome in writing to the involved parties .
    1. For students, the decision of the SMAB is final and binding upon all involved.
    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* (faculty).

## **X. Amendment of These Procedures**

In order to have the flexibility to amend the procedures as necessary to correspond to changes in the law or regulatory guidance, the President, in consultation with the General Counsel, may amend these procedures as necessary. The President shall report any material amendments to the Board of Trustees.