



UNIVERSITY OF
KENTUCKY[®]
Regulations

Administrative Regulation 6:2

Responsible Office: Title IX Coordinator / Office of Institutional Equity and Equal Opportunity

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

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I. Introduction

This *Administrative Regulation 6:2 (AR 6:2)* establishes the University's policies and procedures for addressing and resolving allegations of harassment, discrimination, sexual assault, stalking, dating violence, domestic violence, sexual exploitation, complicity in the commission of any act prohibited by this AR 6:2 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 AR 6:2 regulations. The University's Title IX Coordinator and the Office of Institutional Equity and Equal Opportunity (IEEO) administer this AR

6:2. The procedures described in this AR 6:2 are applicable to allegations, investigations, and adjudications of cases involving AR 6:2. These procedures supersede procedures for student misconduct found in the Code of Student Conduct and procedures for ~~regulation~~ Employee misconduct found in Human Resources Policies and Procedures and any other Administrative Regulations. However, they do not supersede faculty Employee termination procedures found in Governing Regulation X.

~~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 Coordinator at (859) 257-8927.~~

II. Policy

The University of Kentucky is committed to providing a safe learning, living, and working environment for all members of the University Community~~community~~. Consistent with this commitment, the University prohibits harassment, discrimination, sexual assault, stalking, domestic violence, dating violence, sexual exploitation, and complicity in the commission of any act prohibited by this AR 6:2~~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 AR 6:2~~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 AR 6:2~~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 AR 6:2~~regulation~~.

Every member of the University Community~~community~~ is responsible for ~~to~~ fostering an environment free from prohibited conduct. All members of the University Community~~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

- A. This AR 6:2~~Administrative Regulation~~ applies to all members of the University Community~~community~~, including Employees, Students~~faculty, staff, students~~, visitors, volunteers, ~~and~~ Registered Student Organizations~~registered student organizations~~.
- B. ~~B.~~ This AR 6:2~~regulation~~ applies to any acts of harassment, discrimination, sexual assault, stalking, dating or domestic violence that occur:
- On campus or any other University owned, leased, controlled, or operated location;
 - During any activity off University Premises~~premises~~ if the activity is authorized, initiated, sponsored, aided, or supervised by the University or a Registered Student Organization~~registered student organization~~; or

3. 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 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. Employees University faculty, staff, and Students students may always utilize services of the University's Violence Intervention and Prevention Center (VIP) whether or not the accused is another Student student or Employee employee.

IV. Definitions

The following definitions are for purposes of this AR 6:2 regulation and are not intended to replace or summarize the Kentucky Penal Codes.

a. A. Affirmative Consent

Affirmative Consent 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. ~~3.~~—Is unaware that the act is being committed;
4. ~~4.~~—Is impaired because of a mental or physical condition;
5. ~~5.~~—Is coerced by supervisory or disciplinary authority; or
6. ~~6.~~—Is less than the statutory age of consent.

b. Appropriate Unit Administrator

~~B.~~
The Appropriate Unit Administrator is the Employee supervisor responsible for determining the employment status of the Employee. In the case of most faculty Employees, this will be the Chair of the faculty Employee's department, or the Dean of the faculty Employee's College. In the case of most staff Employees, this will be the immediate supervisor of the staff Employee.

c. AR 6:2 Appeals Board

AR 6:2 Appeals Board (AB) means the Chair of the University Appeals Board (the "UAB") (or his or her designee) and five individuals from the tenured faculty Employee membership of the UAB, and five additional faculty or staff Employees, appointed annually by the President to consider appeals of a Hearing Panel's determination as to whether a violation of AR 6:2 occurred.

d. AR 6:2 Hearing Panel (Hearing Panel)

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

e. AR 6:2 Hearing Panel Pool

AR 6:2 Hearing Panel Pool means the twenty-one individuals appointed by the President from among the Employees to serve on the AR 6:2 Hearing Panels.

b.f. 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~~campus security authorities~~, see *Administrative Regulation 6:7, Section III.E, Policy on Disclosure of Campus Security and Crime Statistics*.

g. Case File

The Case File is the official file with all matters related to the investigation, hearing, and appeal of a Complaint brought under AR 6:2. The Case File is created and maintained by the OIEEO.

h. Case Manager

A Case Manager is an Employee of the University whose primary responsibilities are to serve as a reference point and advisor to a C. ~~Complaining Witness~~

~~Complaining witness~~ Respondent or Complaining Witness during and after the investigation, hearing, and appeals phases of a Complaint under this AR 6:2. A Respondent and Complaining Witness shall not have the same Case Manager.

i. Complaining Witness

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

j. Complaint

A Complaint is a report of an alleged action or behavior that would constitute a violation of this AR 6:2. The Complaint may be in writing or communicated verbally.

e.k. ~~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.

d.l. ~~E.~~ Dating Violence

Dating Violence~~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.

m. Discrimination

Discrimination is an action or behavior that results in negative or different treatment of an individual based upon race, color, ethnic origin, gender identity, gender expression, genetic information, national origin, creed, religion, political belief, sex, sexual orientation, marital status, age, uniform service, veteran status, pregnancy, social or economic status, or physical or mental disability. Discrimination is also prohibited in employment matters based on whether an individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking.

e.n. ~~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.

f.o. ~~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*.

g.p. ~~H.~~ Force or Coercion

Force or ~~Coercion~~ 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.

g. Harassment

Harassment, a form of discrimination, is unwelcome conduct that is based on the statuses noted in section IV.M above. Harassment becomes a violation of University policy when:

1. The offensive conduct explicitly or implicitly becomes a term or condition of employment or participation in a University course, program, or activity; or
2. The conduct is sufficiently severe, pervasive, or persistent to interfere with an individual's work, academic or program participation, or creates an environment that a reasonable person would consider intimidating, hostile, or offensive.

r. Hearing Officer

The *Hearing Officer* shall be appointed by the President, shall be an individual with the degree of Juris Doctor, and shall 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.

h.s. 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 AR 6:2 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.

t. Investigative Report

The Investigative Report is the document produced by the OIEEO in the course of an investigation of Complaint under this AR 6:2. The Investigative Report typically includes the details of the Complaint, reports of interviews with witnesses, and other information the investigator has uncovered in the course of the investigation.

u. Members of the University Community

Members of the University Community are the University’s Employees, Students, and volunteers, as well as customers of University services and visitors to the University.

v. Office of Institutional Equity and Equal Opportunity (OIEEO)

The Office of Institutional Equity and Equal Opportunity (OIEEO) is the office responsible for investigating and responding to complaints under AR 6:2.

i.w. 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 a protected category under IV.1 Discrimination ~~sexual or gender-based harassment, intimate partner violence, or is part of a course of conduct under the stalking definition.~~

j.x. K. Preponderance of Evidence

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

y. Registered Student Organization

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 Administrative Regulation AR 4:1, Registration of Student Organizations, and includes groups that are seeking, but have not yet been granted registered status.

k.z. M. Respondent

A Respondent ~~respondent~~ is anyone against whom a Complaint ~~complaint~~ or allegation of prohibited conduct under this AR 6:2 is made.

l.aa. N. Responsible Employee

Responsible Employee ~~employee~~ means any University Employee ~~employee~~ who:

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

Full-time or part-time faculty Employees are not Responsible Employees in their individual capacity as faculty Employees. Examples of Responsible Employees include Vice-Presidents, Associate Provosts, Deans, Department Chairs, Athletic Directors and Coaches, Resident Assistants, Resident Directors, Area Coordinators, Employees in a supervisory or management role, etc.

~~m.bb.~~ 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 Respondent/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 ~~shall~~should be reported to the OIEEO Title IX Coordinator.

~~n.cc.~~ P. Sanction

Sanction means any educational or disciplinary measure provided to encourage self-reflection regarding the Respondent's/respondent's policy violation, to stop further inappropriate behavior, and/or to deter any subsequent violations. Sanctions ~~shall~~should be appropriately connected to the violation.

~~e.dd.~~ Q. Sexual Assault

1. *Sexual Assault/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/assault* also includes all sex offenses as stated in Kentucky Revised Statutes 510.010 through 510.140.

p-ee. R. Sexual Exploitation

Sexual ~~Exploitation~~*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.

ff. Sexual Harassment

Sexual Harassment, a form of sex discrimination, may or may not take place in situations of a power differential between the individuals involved. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, or other verbal or physical behavior of a sexual nature and becomes a violation of University policy when:

- The offensive conduct explicitly or implicitly becomes a term or condition of employment or participation in a University course, program, or activity; or
- The conduct is sufficiently severe, pervasive, or persistent to interfere with an individual's work, academic or program participation, or creates an environment that a reasonable person would consider intimidating, hostile, or offensive.

Conduct of an amorous or sexual nature occurring in an apparently welcome relationship may be unwelcome due to the existence of a power difference which restricts a subordinate's freedom to participate willingly in the relationship.

If one of the parties in an apparently welcome amorous or sexual relationship has the responsibility for evaluating the performance of the other person, the relationship must be reported to the dean, department chair or supervisor so that suitable arrangements can be made for an objective evaluation of the Student or Employee. (Governing Regulation I.D.2(f))

q-gg. 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) Safety means both physical and mental safety.~~

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

~~(e)(d) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.~~

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

~~(e) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.~~

2. Stalking, as used in this AR 6:2, 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. ~~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.

~~h.h.~~ 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, or any person enrolled in a Senate numbered course. 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~~student~~.

~~s.ii.~~ Support Person

Support Person~~person~~ means an individual~~advocate~~ who may attend an informal meeting or formal hearing to provide advice, support, or guidance to either the Respondent~~respondent~~ or the Complaining Witness. One Support Person~~complaining witness.~~ ~~A support person may not represent or, speak on behalf of the Respondent or Complaining Witness in, delay, disrupt, or otherwise interfere with the proceedings of a meeting.~~ An attorney may serve as a Support Person~~support individual, although the attorney's participation is limited to the role of support individual as described herein.~~

~~t.ji.~~ Title IX Coordinator

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

~~u.kk.~~ ~~W.~~ University Official

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

~~v.ll.~~ University Premises

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

~~mm.~~ University Representative

The University Representative is the individual who represents the University's interests and presents the University's case to an AR 6:2 Hearing Panel, and to the AR 6:2 Appeals Board. The University Representative is a staff Employee, who is not a member of the OIEEO, and who is not a member of the Dean of Student's Office. The University Representative presents the University's case, regardless of the identity of either the Complaining Witness or the Respondent as a Student, faculty Employee, or staff Employee.

V. Prohibited Acts

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

- ~~1.~~ 1.—Engaging in harassment, discrimination, sexual assault, stalking, dating violence, domestic violence, sexual exploitation, and complicity in the commission of any act prohibited by this AR 6:2 regulation;
- ~~2.~~ 2.—Retaliating in any manner against an individual who makes a Complaint of harassment, discrimination, complaint of sexual assault, stalking, dating violence, or domestic violence;
- ~~3.~~ 3.—Interfering with procedures to investigate or redress a Complaint of harassment, discrimination, complaint of sexual assault, stalking, dating violence, or domestic violence; and
- ~~4.~~ 4.—Making an intentionally false accusation of prohibited conduct through the University's procedures.

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

VI. Reporting Complaints

A. ~~The A.~~ Any University ~~strongly encourages any University Employee~~employee who witnesses or is made aware of an incident of prohibited ~~conduct to report it to the Office of Institutional Equity and Equal Opportunity as soon as possible. Any Responsible Employee who witnesses or is made aware of an incident of prohibited conduct by an Employee or a Student~~conduct shall report it to the Office of Institutional Equity and Equal Opportunity~~University Police or the Title IX Coordinator~~ as soon as possible.

B. ~~B.~~ The University strongly encourages prompt reporting by Students, members of the University Community, and other non-employees, including victims, witnesses, and those who are made aware of incidents of ~~incidents of~~ prohibited conduct. Reports may be made to the Office of Institutional Equity and Equal Opportunity. An incident may be reported without filing a written Complaint. Reports of

suspected criminal behavior may also be made to the University of Kentucky Police, or to 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 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. For reporting responsibilities of individuals designated as Campus Security Authorities, see Administrative Regulation 6:7, Policy on Disclosure of Campus Security and Crime Statistics.~~

C. ~~D.~~ Confidential reporting is allowed to the University Violence Intervention and Prevention Center, and the University Counseling Center (for Students), the Office of Work Life (for Employees), 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.

D. ~~E.~~ The University shall provide ~~provides~~ information on pursuing criminal or other legal action, health care, counseling, and other support services available for Students, Employees ~~students, faculty, staff,~~ and visitors who have made a Complaint ~~complaint of prohibited conduct.~~

E. ~~F.~~ The University shall make ~~makes~~ a good faith effort to resolve Complaints ~~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 ~~complaining witness~~ and the Respondent ~~respondent~~ of the delay and the reason for the delay.

F. ~~G.~~ The University encourages individuals who make a Complaint ~~complaint of prohibited conduct~~, regardless of where the Complaint ~~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.

G. ~~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
<u>Office of Institutional Equity and Equal Opportunity</u>	<u>(859) 257-8927</u>

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

Martha Alexander, Deputy Title IX Coordinator
13 Main Building
859-257-8927
Martha.alexander@uky.edu

VII. Rights of the Complaining Witness and the Respondent

1. ~~A.~~—The Complaining Witness~~complaining witness~~ has the right to choose whether or not to file a Complaint~~complaint~~ with the University. However, when the University is made aware of an allegation of prohibited conduct by an Employee, or an allegation of behavior that indicates a pattern, or exceedingly violent or predatory behavior, it must investigate and take appropriate action.
2. ~~B.~~—In addition to pursuing administrative penalties and remedies, the Complaining Witness~~complaining witness~~ maintains the right to pursue criminal or other legal action.
3. ~~C.~~—Both the Complaining Witness~~complaining witness~~ and the Respondent~~respondent~~ have the right:
 1. To be treated with respect by University Officials~~officials~~;
 2. To take advantage of campus support resources;
 3. To experience a safe living, educational, and work environment;
 4. ~~To take advantage of campus support resources~~;
 5. ~~To experience a safe living, educational, and work environment~~;
 6. To have up to two (2) support persons present during meetings and hearings;
 7. To refuse to have an allegation resolved through conflict resolution procedures;
 8. To receive amnesty for certain student misconduct, such as alcohol or drug violations, that occurred ancillary to the incident;
 9. To be free from retaliation for reporting violations of this policy or cooperating with an investigation;
 10. Support Persons present during meetings and hearings;
 11. ~~To refuse to have an allegation resolved through conflict resolution procedures~~;
 12. ~~To receive amnesty for certain student misconduct, such as alcohol or drug violations, that occurred ancillary to the incident~~;
 13. ~~To be free from retaliation for reporting violations of this policy or cooperating with an investigation~~;
 14. To have Complaints processed~~complaints heard~~ in accord with University procedures;

15. To be informed in writing of the outcome/resolution of the Complaint, of the complaint, sanctions (where permitted by applicable law), ~~permissible~~, and of the rationale for the outcome (where ~~permissible~~;
16. To have minimal interaction or contact with the responding party or complaining party; and
17. 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

18. permitted by applicable law);
19. ~~To have minimal interaction or contact with the responding party or complaining party; and~~
20. ~~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~~

- A. ~~A.~~ For Students~~students, faculty~~, and Employees~~staff~~, the University utilizes the procedures outlined in this AR 6:2~~the Appendix~~ to address and resolve allegations of prohibited conduct.
- B. ~~B.~~ The recommended range of sanctions for Students~~students~~ are in accordance with this AR 6:2~~the Appendix~~ and include disciplinary probation, counseling assessment, social restrictions, social suspension, suspension, dismissal, expulsion, revocation of admission, or revocation of degree or other conferred academic credential. A recommended sanction of revocation of a certificate, degree, or other University academic credential that was conferred after the prohibited conduct occurred shall be referred to the Board of Trustees for final action. (See KRS 164.240) Additional sanctions also may be imposed when appropriate. ~~(See KRS 164.240) Additional sanctions also may be imposed when appropriate.~~ Both the Complaining Witness~~complaining witness~~ and the Respondent~~respondent~~ shall be informed of the outcome of the corrective action or disciplinary process.
- C. ~~C.~~ The recommended range of sanctions for Employees~~faculty and staff~~ are in accordance with this AR 6:2~~the Appendix~~ and include suspension, counseling, or termination of employment. Additional sanctions also may be imposed when appropriate. ~~Additional sanctions also may be imposed when appropriate.~~ Both the Complaining Witness~~complaining witness~~ and the Respondent~~respondent~~ shall be informed of the outcome of the corrective action or disciplinary process, where permitted by applicable law.
- D. ~~D.~~ Both parties have the right to appeal the decision as detailed in this AR 6:2~~the Appendix~~.

IX. Education

Regular and ongoing education on conduct covered by this AR 6:2 is available for all members of the University Community~~community~~. The VIP Center offers both online and interactive training sessions for Students~~students~~ and conducts Green Dot bystander intervention training for Employees~~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~~employees~~, in the Supervision curriculum, and for Employees~~employees~~ and any units upon request.

~~References and Related Materials~~

~~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~~

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~~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

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.~~

~~w.nn. 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)(e) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.~~

~~(c)(f) 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~~

X. Initiating A Complaint and Investigation Process

~~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~~

- ~~Filing a Complaint: All Complaints ~~complaints~~ related to alleged violations of AR 6:2, regardless of where the Complaint ~~complaint~~ is initially received, shall be referred to the OIEEO for Title IX Coordinator ~~for~~ investigation. All Complaining Witnesses shall be notified of the availability of the Complaining Witness Case Manager, and of the pool of funds available to assist in hiring legal representation for the preparation for and participation in the investigation and any subsequent hearing or appeals.~~
- ~~Confidential Reporting: Individuals may make a confidential Complaint ~~complaint~~ or report (where individuals receiving the Complaint ~~complaint~~ are not required to report incidents to the OIEEO Title IX Coordinator) to the University Violence Intervention and Prevention Center (VIP Center), the University Counseling Center (Students only), ~~or~~ University Health Services (Students only), or the Office of Work Life (Employees ~~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 ~~offenses~~~~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:* ~~A violation~~~~Violations~~ of AR 6:2 may be both a violation of University policy and ~~federal or state~~ law, and as such, the University encourages ~~Complaining Witnesses~~~~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~~~~official~~. The result of an external criminal investigation ~~or a civil court proceeding~~ 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 ~~or civil court proceeding~~ to begin conducting its own independent investigation, ~~to~~ take interim measures to protect the University or any member of the University ~~Community~~~~community~~, or when necessary, to initiate hearing procedures as outlined below.
- D. *Investigation:* Upon receipt of a ~~Complaint~~~~complaint~~, the ~~OIEEO~~~~Title IX Coordinator~~ (or designee) shall conduct an investigation to determine if there is enough information to support ~~the claim of~~ ~~an~~~~and~~ alleged violation of AR 6:2 and, if so, which violation(s) occurred. ~~If there is sufficient evidence to proceed with an investigation, OIEEO will provide notice to the Respondent regarding the allegations, interim remedies or other actions, of the availability of a Case Manager, to whom the Respondent can refer questions about this process, and of the availability of University funds to cover the Respondent's costs in hiring legal representation to assist in preparing for and participating in the investigation and any subsequent hearing or appeals. If it is determined that there is insufficient evidence to proceed with an investigation or hearing, then the OIEEO shall record to the Case File that determination and close the Case File. If the Complaining Witness does not wish to move forward with an investigation, the OIEEO shall close the file, unless the University is required by applicable law to proceed.~~

XI. Interim Remedies

IV. INTERIM REMEDIES

A. Interim Suspension (Students)

1. In certain circumstances, the ~~OIEEO~~~~Title IX Coordinator~~, may impose an interim suspension from University ~~Premises~~~~premises~~ upon receiving a ~~Complaint~~~~complaint~~ and prior to the completion of the disciplinary process. Upon taking such action, ~~OIEEO~~~~the Title IX Coordinator~~ or authorized representative shall immediately notify the chair of the ~~UABS~~~~SMAB~~. The ~~Student~~~~student~~ shall be notified in writing ~~by the Office of Institutional Equity, and Equal Opportunity of the reasons for,~~ the interim suspension, ~~the conditions of the interim suspension, and the reasons for it.~~ Interim suspension may be imposed to:
 - (a) Ensure the safety and wellbeing of members of the University ~~Community~~~~community~~ or ~~the~~ preservation of University property;
 - (b) Ensure the ~~Student's~~~~student's~~ own physical or emotional safety and wellbeing; or
 - (c) Ensure that normal operations of the University are not disrupted.
2. A ~~Student~~~~student~~ may appeal the interim suspension to the ~~UABS~~~~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~~student~~ shall be given an opportunity to appear personally (including a lifting of any temporary suspension from the University's Premises for purposes of attending the appeal) before the UAB~~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~~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~~student~~ on University Premises~~premises~~ poses a substantial and immediate physical, mental, or emotional threat to himself or herself or to others or the stability and continuance of normal University functions.
3. A Student~~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~~appropriate unit administrator~~, upon the recommendation of the OIEEO~~Title IX Coordinator~~, may impose an interim suspension from University Premises~~premises~~ upon receiving a Complaint~~complaint~~ and prior to the completion of the disciplinary process. The accused Employee~~individual~~ shall be notified in writing of the interim suspension, the conditions of the interim suspension, and the reasons for it,~~the interim suspension~~. Interim suspension may be imposed to:

- (a) Ensure the safety and wellbeing of members of the University Community~~community~~ or the 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. A faculty Employee may appeal the interim suspension to the University Senate's Advisory Committee on Privilege and Tenure (SACPT) in writing within seven business days of the notice of the interim suspension. A staff Employee may appeal the interim suspension to the Staff Senate Staff Issues Committee in writing within seven business days of the notice of the interim suspension. Interim suspension shall remain in effect during the appeal. If requested in the written appeal, an Employee shall be given an opportunity to appear personally (including a lifting of any temporary suspension from University premises for purposes of attending the appeal) before the SACPT or the Staff Senate Staff Issues Committee within three business days of filing the appeal in order to discuss the following issues only:

- (a) The reliability of the information concerning the Employee'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 Employee on University Premises poses a substantial and immediate physical, mental, or emotional threat to himself or herself or to others or the stability and continuance of normal University functions.

2.3. An Employee~~employee~~ under interim~~temporary~~ suspension shall be given an opportunity for a prompt hearing within these disciplinary procedures. Salary shall be continued during the period of the interim suspension. Decisions on faculty Employee 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~~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~~students), workplace or workstation (~~Employees~~employees) situation for the ~~Complaining Witness~~complaining witness or ~~Respondent~~respondent;
- ~~3. Removing a student from residential facilities or removing an employee from the work setting or University premises (See Interim Restriction or Suspension);~~
- ~~4.3.~~ Limitation on contact between parties (e.g., no-contact orders, no-trespass orders);
- ~~5.4.~~ Referral to academic support services, such as tutoring and testing accommodations (~~Students~~students);
- ~~6.5.~~ Adjustments to course schedules and academic deadlines (~~Students~~students) or work schedules (~~Employees~~employees);
- ~~7.6.~~ Other appropriate remedies based on each individual situation.

Interim remedies listed above in C.1-5 ~~are not subject to appeal. Interim remedies assessed under C.6 that are of a more severe nature than C.1-5 shall be~~ ~~7 are not~~ subject to appeal.

XII. Notice and Administrative Measures

~~V. NOTICE AND ADMINISTRATIVE MEASURES~~

- A. The ~~OIEEO~~~~Title IX~~ coordinator shall notify the ~~Respondent~~respondent in writing of the ~~outcome of the investigation, including the~~ alleged violation(s) ~~determined and stated in the investigative report.~~ The notice ~~of pre-hearing meeting~~ shall include a summary of the ~~Complaint~~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~~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~~registered student organizations, the notice shall be mailed to the ~~Organization's~~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 ~~OIEEO~~~~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~~respondent's and ~~Complaining Witness'~~complaining witness' class or work schedule and the availability of the ~~OIEEO, the University Representative, the Hearing Officer and~~Title IX Investigator, Hearing Panel members, and other witnesses. A meeting or formal hearing shall only be rescheduled for good cause.

XIII. Informal Resolution Option

~~VI. INFORMAL RESOLUTION OPTION~~

Pre-Hearing Meeting: The ~~OIEEO~~~~Title IX~~ Coordinator or representative shall meet separately with the involved parties to: (1) ~~read~~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 Persons~~support individuals, pre-hearing meetings are closed meetings. If the ~~Respondent~~respondent chooses to resolve the allegation ~~within~~during the specified time-framemeeting, the case is closed and the ~~Dean of Students or Appropriate Unit Administrator~~appropriate unit administrator(s) shall be notified. If the ~~Complaining Witness~~complaining witness does not accept the informal resolution, or if the allegation is not resolved during the specified time framemeeting, the case shall be referred to the Hearing Officer for formal resolution by a Hearing Panel.

XIV. Formal Hearing Procedures

AR 6:2 VII. FORMAL HEARING PROCEDURES

- A. ~~Sexual Misconduct Hearing Panel Pool~~: The President shall appoint up to twenty-one ~~(21)~~ individuals who are tenured from the faculty Employees or and staff Employees to serve as members of the AR 6:2 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 who holds learned in the degree of Juris Doctor 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. AR 6:2 Sexual Misconduct Hearing Panel: Once a case is referred to the Hearing Officer for a formal hearing, the Hearing Officer selects three members from the AR 6:2 Hearing Panel Pool. In all instances, at least two of the AR 6:2 Hearing Panel members must be tenured faculty Employees. If either the Respondent or the Complaining Witness is a staff Employee, the third member of the AR 6:2 Hearing Panel must be a staff Employee. In the case of a faculty Employee Respondent, the third member of the AR 6:2 Hearing Panel may be either a faculty Employee or a staff Employee. In the case of a Student Respondent, the third member of the AR 6:2 Hearing Panel may be either a faculty Employee or a staff Employee. ~~(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:
- Given the nature of these incidents, and the impact on the overall University Community, community, a representative from the University Representative shall present the case ~~on behalf of the University~~. The rights of the University Representative this representative shall be same as those of the Complaining Witness, complaining witness. The burden of proof shall rest with on the University Representative.
 - The University Representative and the Respondent respondent shall submit to the Hearing Officer the following any information: any documentation they wish to present at the hearing, the name(s) of any Support Person support person(s) and whether any Support Person the support person is an attorney, a preliminary list of questions, and a list of 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.
 - The Respondent A respondent or the Complaining Witness complainant may request to postpone the hearing for reasonable cause. The Respondent respondent or Complaining Witness 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 ~~OIEEO~~Title IX Coordinator shall arrange the attendance of witnesses who are members of the University ~~Community~~community, if reasonably possible. The ~~Respondent, Complain~~ing Witness, and University Representative~~involved parties~~ are responsible for arranging the attendance of witnesses who are not members of the University ~~Community~~community.
5. The ~~OIEEO~~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. ~~The formal hearing file provided to the parties~~ and shall contain the ~~OIEEO's investigative~~Title IX investigator's report, a list of witnesses, the preliminary questions submitted by parties, but not the questions proposed for the opposing party, and ~~and~~ any other related information. The Hearing Panel receives the formal hearing file containing the above information redacted as instructed by the Hearing Officer.
6. Both the ~~Respondent~~respondent and the University ~~Representative~~ 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, the University Representative, and the Support Persons for both the Respondent and the Complain~~The respondent and the University representative (not the advisors)~~ing Witness shall also be given an opportunity to examine and cross-examine witnesses who testify at the hearing, except that the ~~Complain~~ing Witness~~complain~~ing witness and the ~~Respondent~~respondent may not personally cross-examine each other, nor may the Support Persons (including attorneys) representing the Respondent and Complain~~ing Witness~~ing Witness cross-examine the Respondent or Complain~~ing Witness.~~ing Witness. Instead, the Respondent, the Complain~~ing Witness and their Support Persons~~ing Witness and their Support Persons may submit questions to the Hearing Officer to ask ~~cross-examination~~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 ~~Complain~~ing Witness~~complain~~ing witness shall be excluded from hearings, except for the period of their own testimony.
8. The ~~Complain~~ing Witness~~complain~~ing witness and the ~~Respondent~~respondent have the right to be assisted by up to two ~~Support Persons~~(2) support person(s) of their choice, ~~and at their own expense.~~ Support ~~Persons~~person(s) may communicate privately with the person they support during the hearing, and one Support Person may but are not permitted to participate directly in any hearing or appeal. The University shall provide funding of up to \$2000 to cover the costs of the Respondent and up to \$2000 to cover the costs of the Complain~~ing Witness hiring an attorney to serve as a Support Person for the hearing and any subsequent appeals within the University. The University will not provide funding to pay for the cost of an attorney in any non-University criminal or civil proceeding. The attorney will receive payment at the rate set by state law.~~ing Witness hiring an attorney to serve as a Support Person for the hearing and any subsequent appeals within the University. The University will not provide funding to pay for the cost of an attorney in any non-University criminal or civil proceeding. The attorney will receive payment at the rate set by state law.
9. The hearing shall be closed to the public. The ~~Complain~~ing Witness, Respondent~~complain~~ing witness, respondent, and their ~~Support Person~~support person(s), if any, may are allowed to attend the ~~entirety~~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, ~~and/or~~ procedural ~~questions,~~ shall be addressed to and ruled upon by the Hearing Officer.

12. If the Respondent or the Complaining Witness fails~~a respondent or complaining witness fails~~ to appear before the Hearing Panel without good cause, evidence~~the information~~ regarding the allegation shall be presented and a determination of finding shall be made in the Respondent's or Complaining Witness's~~respondent's~~ absence.
13. The Complaining Witness, the Respondent~~complaining witness, respondent~~, or a witness may request reasonable accommodations to address concerns for their~~the~~ personal safety. This~~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 will be permitted if that accommodation violates~~shall violate~~ the due process rights of the Respondent or the Complaining Witness.
14. After the Hearing Panel has reviewed the evidence presented at the hearing, the Panel shall determine whether the Respondent~~respondent~~ has violated any section of AR 6:2. The Panel determination shall specifically state which section(s) of AR 6:2 have been violated.
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~~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~~ University Representative, the Respondent~~respondent~~ and the Complaining Witness~~complainant~~ may submit relevant evidence or make relevant statements regarding the appropriateness of a specific sanction. In addition, the Dean of Students in the case of a Student Respondent, or the Appropriate Unit Administrator in the case of an Employee Respondent may provide information to the Hearing Panel regarding the appropriateness of any particular sanction. The past disciplinary record of the Respondent (other than records relating to accusations under AR 6:2)~~The past disciplinary record of the respondent~~ shall only be supplied to the Hearing Panel during the supplemental proceeding to consider sanctions. (See also XIV.D.20)
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 ~~its~~~~the~~ decision regarding both responsibility and sanctions. The report shall be provided~~submitted~~ to the University Representative~~representative~~, the Dean of Students (for Students~~students~~) or the Appropriate Unit Administrator~~appropriate unit administrator~~ (for Employees), the Respondent~~employees~~), and the Complaining Witness~~involved parties~~ no more than seven (7) ~~business~~ days following a hearing, unless extraordinary circumstances exist that would delay issuance of the written outcome.
18. ~~The~~~~The~~ sanctions will~~shall~~ be ultimately determined and imposed by the Dean of Students (Students~~students~~) or the Appropriate Unit Administrator (Employees)~~appropriate unit administrator (employees)~~; ~~however, the Panel's recommendation shall be considered in determining and imposing sanctions~~. The Dean of Students or Appropriate Unit Administrator has the authority to request within three business days that, and unit administrators are not limited to sanctions recommended by the Hearing Panel reconsider its recommended sanction in two scenarios: (1); however, if the Dean of Students or Appropriate Unit Administrator believes the sanction is not commensurate with the accused violation of AR 6:2, or (2) if the Dean of Students or the Appropriate Unit Administrator believes that~~unit administrator rejects or modifies~~ the Hearing Panel's recommended sanction will have unforeseen or unintended consequences on the workplace or student life space of the Respondent, including any potential consequences~~recommendation, they shall provide reasons in writing to~~ third~~the Hearing Panel and the involved parties~~.

19. All hearings, with the exception of the deliberations, shall be recorded. The recording is a part of the Hearing File, and is the property of the University.

20. A determination of no responsibility by the Hearing Panel shall not be considered as a part of any future investigation, hearing, or determination of appropriate sanctions for any future Complaint under this AR 6:2. Any other result regarding a Complaint under this AR 6:2 may be considered as part of the investigation, hearing or determination of appropriate sanctions in a future Complaint against the Respondent.

21. In any situation in which the outcome of a Complaint against the Respondent under this AR 6:2 might be considered in reference to another Complaint against the Respondent under this AR 6:2, the Respondent shall be given access to the OIEEO's Case File regarding the Complaint, although those files may be sufficiently redacted to protect the identity of parties involved in the Complaint.

XV. Recommended Sanctions

VIII. RECOMMENDED SANCTIONS

The chart below outlines the recommended range of sanctions for specific violations of AR 6.2. Additional sanctions not specifically listed below may also be imposed when appropriate.

	Recommended Range of Sanctions (STUDENTS)	Recommended Range of Sanctions (EMPLOYEES)
Sexual Assault	Suspension, Dismissal, <u>Expulsion</u> , Revocation of Admission and/or Degree	Suspension, Termination
Dating Violence or Domestic Violence	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, <u>Expulsion</u> , Revocation of Admission and/or Degree	Probation (<u>Staff</u>), Counseling Assessment, Suspension, Termination
Stalking	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, <u>Expulsion</u> , Revocation of Admission and/or Degree	Probation (<u>Staff</u>), Written Warning, Counseling Assessment, Suspension, Termination
<u>Sexual Exploitation</u>	<u>Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, Expulsion, Revocation of Admission and/or Degree</u>	<u>Probation (Staff), Written Warning, Counseling Assessment, Suspension, Termination</u>
<u>Harassment</u>	<u>Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, Expulsion, Revocation of Admission and/or Degree</u>	<u>Probation (Staff), Written Warning, Counseling Assessment, Suspension, Termination</u>
<u>Discrimination</u>	<u>Disciplinary Probation, Counseling Assessment, Social Restrictions,</u>	<u>Probation (Staff), Written Warning, Counseling Assessment, Suspension,</u>

Social Suspension, Suspension,
Dismissal, Expulsion, Revocation of
Admission and/or Degree

Termination

XVI. Appeals to the University AR 6:2 Appeals Board

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

- A. *Composition:* The AR 6:2 Appeals Board~~SMAB~~ consists of the Chair of the UAB ~~five~~~~ten (10)~~ individuals from the tenured faculty Employee membership of the UAB, and five additional faculty or staff Employees~~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. Students may not be members of the AR 6:2 Appeals Board. The Chair shall be a person holding a Juris Doctor degree and a tenured faculty Employee. ~~learned in the law.~~ The Chair of the UAB may, with the approval of the President of the University, appoint a designee from the tenured faculty Employee membership of the UAB who holds a Juris Doctor degree to serve in his or her stead. ~~The Chair and members of the AR 6:2 Appeals Board and members of the SMAB~~ shall receive training from the Title IX Coordinator in matters related to harassment, discrimination, sexual assault, domestic violence, dating violence, and stalking. ~~For allegations involving students the SMAB serves in place of the University Appeals Board.~~
- B. *Appeal:* The Respondent, the Complaining Witness,~~A respondent~~ or the University Representative~~complaining witness~~ may appeal the decision and/or the recommended sanction to the AR 6:2 Appeals Board~~SMAB~~.
- All appeals shall be submitted in writing to the Chair of the UAB~~SMAB~~, or postmarked if mailed, within seven ~~(7)~~ business days of the receipt of the written decision rendered by the AR 6:2 Hearing Panel.
 - The Chair of the UAB~~SMAB~~ and two ~~(2)~~ members of the AR 6:2 Appeals Board~~SMAB~~ chosen by the Chair shall constitute the AR 6:2 Appeals Board panel. At least one of the members of the AR 6:2 Appeals Board panel (in addition to the Chair) must be a tenured faculty Employee. If either the Respondent or the Complaining Witness is a staff Employee, the final member of the AR 6:2 Appeals Board panel must be a staff Employee~~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)
 - The Respondent or the Complaining Witness~~A respondent and complaining witness~~ and their Support Persons~~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 AR 6:2 Appeals Board~~SMAB~~ has appellate jurisdiction over appeals related to violations of AR 6:2. The appeal is limited to:
- 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~~complaining witness~~ a reasonable opportunity to prepare and to present information regarding the alleged violation, and providing the Respondent~~respondent~~ a reasonable opportunity to prepare and to present a response to those allegations. Specifically, the AR 6:2 Appeals Board panel~~SMAB~~ will determine whether the factual findings were clearly erroneous. In reviewing procedures, or legal conclusions regarding admission or exclusion of

evidence, the review is *de novo*.

2. Whether the sanction(s) imposed was appropriate for the violation for which the Respondent~~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~~respondent~~ or Complaining Witness~~complaining witness~~ files an appeal, the OIEEO~~Title IX Coordinator~~, the University Representative~~representative~~ and the non-appealing~~other~~ party involved in the complaint shall be notified of the appeal by the Chair of the AR 6:2 Appeals Board and shall be ~~and~~ provided an opportunity to file a response. A response must~~shall~~ be filed within five ~~(5)~~ business days of being notified of the appeal.
- F. *Appeal Record*: In considering an appeal, the AR 6:2 Appeals Board panel~~SMAB~~ shall conduct a review of the existing documentary and verbatim record, including but not limited to:
1. The hearing file (including the recording or transcript of the AR 6:2 Hearing);;
 2. The written recommendations of the Hearing Panel;
 - ~~3. The recording or transcript of the formal hearing;~~
 - ~~4.3. The letter of appeal; and~~
 - ~~5.4. Any responses~~Responses from the OIEEO~~Title IX Coordinator~~, University Representative~~representative~~, and the non-appealing~~other~~ party, the Dean of Students (~~involved in the case of a Student Respondent~~), or the Appropriate Unit Administrator (in the case of an Employee Respondent).~~complaint, if any.~~
- G. *AR 6:2 Appeals Board Panel*~~SMAB~~ *Decision*: Upon review of all of the information, the AR 6:2 Appeals Board panel~~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~~Sanction~~; however, the AR 6:2 Appeals Board panel~~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. *AR 6:2 Appeals Board*~~SMAB~~ *Decision*: The UAB~~SMAB~~ Chair shall communicate the outcome in writing to the involved parties~~.~~
1. For Students~~students~~, the decision of the AR 6:2 Appeals Board~~SMAB~~ is final and binding upon all involved.
 2. For staff Employees~~employees~~, the decision of the AR 6:2 Appeals Board may be appealed pursuant to Governing Regulations GR I.F
 - ~~2.3. For faculty Employees, the decision of the AR 6:2 Appeals Board~~SMAB may be appealed pursuant to applicable law (KRS 164.230) and/or Governing Regulations~~University regulations GR I.F and GR X.B. 1.f. (faculty).~~

XVII. ~~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 and the University Senate, may amend these procedures as necessary. The President shall report any material amendments to the Board of Trustees, and this report by the President to the Board of Trustees shall be shown in the minutes of a meeting of the Board of Trustees.

References and Related Materials

Title VII of the Civil Rights Act, 42 U.S.C. § 2000e

29 C.F. R. Part 1604.11

The Age Discrimination in Employment Act, 29 U.S.C § 621

The Americans with Disabilities Act, 42 U.S.C. § 12101

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 164.230

KRS 164.240, Degrees Granted by Trustees

KRS 344.040; KRS 61.165

KRS 510.010 - 510.140, Sexual Offenses

Administrative Regulation: 6:5

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

Governing Regulation: Parts I and X

Revision History

1/26/2009, 9/30/2014 (Interim), 12/3/2014, 6/19/2015 (addition of procedures), ___ / ___ /2017

For questions, contact: Office of Legal Counsel

