

Memorandum

20 September 2017

To: Senate Council

From: Members of the Ad Hoc Senate Council Committee Regarding AR 6:2 (Chair: Jennifer Bird-Pollan; Members: Garrett Bell, Jeffrey Bosken, Alice Christ, Diane Follingstad, Davy Jones, Willis Jones, Beth Kraemer, TK Logan; Participants: Martha Alexander, Marcy Deaton)

Charge and Recommendations

In October 2016, the University Senate Council formed a Committee to consider the Administrative Regulation (“AR”) 6:2, regarding Sexual Assault and Sexual Harassment. Since the formation of the committee in October 2016, the members of the committee have been meeting regularly. The committee began by considering the document in its current form, and created a list of what we believe should be addressed in the current document, and what might be missing, if we were drafting a new Regulation from scratch. As a result of a Senate Council meeting in December 2016, the Committee’s purview was expanded. Beginning in December 2016, the Committee added consideration of AR 6:1, dealing with discrimination and harassment, to the list of items it would consider. This Memorandum details the findings of the Ad Hoc Committee.

Background Information regarding AR 6:1 and 6:2

In 2008 the University of Kentucky administration sought the advice of the University Senate Council regarding a new draft regulation relating to sexual assault, which was officially promulgated as AR 6:2, published on January 26, 2009. In response to new guidance from the Department of Education, the President issued an interim revision to AR 6:2 on September 30, 2014. This interim Regulation was published without consultation with the University Senate, though, as an interim regulation, it did not require Senate consultation under the AR 1:6 “Regulation Review Process”. However, a revision to AR 6:2 promulgated in Dec. 2014 without solicitation for Senate Council advice was not identified by the administration as ‘interim’. On April 15, 2015 the President submitted to the Board of Trustees a proposed new “Appendix” to AR 6:2. On June 19, 2015, the President then promulgated another revised AR 6:2 that newly included an “Appendix.” The Senate Council realized it had not been consulted regarding this new final AR, and at its June 17, 2016 retreat voted to form a committee comprised of faculty, staff, and students to review AR 6:2.

Recommendations

The main substance of this memorandum is a list and explanation of the amendments this Committee recommends regarding the existing ARs 6:1 and 6:2. As a preliminary comment, however, one must remember that Title IX investigations and hearings are not criminal proceedings, but instead deal with a civil rights claim about equal access to education and work place. As a result, the investigation and hearing are not proceedings of the Complaining Witness against the Respondent. Instead, the complaint is brought by the University, the hearing is administered by the University, in compliance with the proceedings described in ARs 6:1 and 6:2, and then a decision is made about whether or not the Respondent is compromising the Complaining Witness's equal access to education. Our recommendations are a response to the unusual status of these investigations and hearings, which implicate due process considerations, in light of the potential sanctions available, but which are also designed specifically to address the requirements of the federal Title IX rules and other relevant federal and state civil rights laws.

The following section of the memorandum identifies the specific recommendations that our committee makes regarding changes to the ARs 6:1 and 6:2. This is a list of independent recommendations, any of which can be adopted without the adoption of the entire list of recommendations.

1. On 24 January 2017, the Committee voted to combine ARs 6:1 and 6:2. All procedural elements in place for AR 6:2 will now apply for alleged offenses under the old AR 6:1. The Committee felt that there were no good justifications for distinguishing allegations of harassment and discrimination (traditionally covered under old AR 6:1) from allegations of sexual assault, stalking, dating violence, and domestic violence (traditionally covered under old AR 6:2). There was very little procedural detail in the old AR 6:1. The Committee recommends that all new proposals included in this memo and attached amended AR 6:2 apply to all allegations that would have been included under the old AR 6:1 or old AR 6:2.
2. Many of the proposed changes to AR 6:2 have been added to clarify the existing practice through amendments to the language.
3. To simplify the document and make clear that the important information previously found in the Appendix is part of the rules of AR 6:2, the Committee eliminated the separate Appendix, and incorporated the procedures detailed in the Appendix into the text of the Regulation itself.
4. The Committee believes it is important to ensure that any Complaining Witness who brings a complaint to the Office of Institutional Equity and Equal Opportunity receive notice of the ultimate resolution of that complaint. To answer concerns that Complaining Witnesses are not being notified of the resolution, our proposed amendments clarify what information must be shared

with Complaining Witnesses. (See revised AR 6:2, Section VII. Part C.9, page 11.)

5. The old AR 6:2 made all University employees, with the exception of the VIP Center, Health Services, and Counseling Services, mandatory reporters of offenses of which they became aware. (See [existing AR 6:2, Section VI, Part A, page 7](#); [existing AR 6:2, Section VI, Part D, page 8](#).) While the Committee understands the rationale for wanting significant reporting, the Committee also believes that making effectively all University employees into mandatory reporters would likely have the effect of stifling faculty-student interactions. The Committee ultimately determined that the downsides of such a mandate are likely to exceed the benefits from having mandatory reporting. Instead, the Committee recommends a change to the old ARs, making only individuals with authority to redress, or those whom students might reasonably expect to have that authority, into mandatory reporters under the new AR. Responsible Employees are defined in the AR as anyone who “(i) has the authority to take action to redress the prohibited conduct; (ii) has been given the duty of reporting incidents of prohibited conduct or any other misconduct to the Title IX Coordinator or designee; or (iii) who an individual reasonably believes has this authority or duty.” This is the definition of "responsible employees" in Title IX guidance. (See [Questions and Answers on Title IX and Sexual Violence, April 29, 2014 Frequently Asked Questions, page 15](#).) We recommend that UK's definition of "responsible employees" not include any additional employees in category ii (where currently ALL employees are included). This change is consistent with the AAUP's recommended best practices in "The History, Uses, and Abuses of Title IX" June, 2016. <https://www.aaup.org/report/history-uses-and-abuses-title-ix>, and practice at other universities (see for example <https://www.brown.edu/about/administration/title-ix/policy> and https://prevention.uoregon.edu/sites/prevention1.uoregon.edu/files/Gender_based_employee_reporting_responsibility_policy_effective_Sept.15,2017_0.pdf).

Using the current AR 6:2 definition of “Responsible Employees” as the category of mandatory reporters will not clarify who on campus is specifically required to report allegations under this Regulation, nor does it resolve the concerns addressed above about stifling faculty-student interactions. (See [existing AR 6:2, Appendix, Part II “Definitions,” Section N, page 13](#).) The administration may consider excluding specific groups of people from the definition of Responsible Employees, or training employees to help them understand whether or not they are Responsible Employees. The proposed amendments to AR 6:2 include a list of potential Responsible Employees. (See revised AR 6:2, Section IV “Definitions,” Part AA, page 6.) The Committee understands that the Office of Institutional Equity and Equal Opportunity is already offering training to UK employees, which covers some of these issues.

6. In order to quickly address the needs of Complaining Witnesses, AR 6:2 includes the possibility of temporarily suspending the Respondent from UK's premises. (See [existing AR 6:2, Appendix, Section IV “Interim Remedies,” Part A and Part](#)

B, page 17.) In order to provide procedural rights to Respondents, anyone temporarily suspended from campus in this manner must be able to appeal that suspension in a timely manner. The old AR 6:2 included a procedure for students, but included no guidance for faculty or staff Respondents subject to a temporary suspension from campus. The Committee believed such a procedure ought to be included for all Respondents, so the Committee recommends that faculty Respondents be able to appeal any temporary suspension from campus to the Senate Advisory Committee on Privilege and Tenure (SACPT). Staff Respondents must be able to appeal any temporary suspension from campus to the Staff Senate Staff Issues Committee. Further, since the UAB is primarily an academic body, we believe it would be more appropriate for students to appeal interim remedies to a body specifically designed to deal with the kinds of issues that arise under AR 6:2. We suggest using the Community of Concern for appeals of interim remedies. (*See revised AR 6:2, Section XI "Interim Remedies," Part B, Number 2, page 14.*)

7. In order to ensure that both Respondents and Complaining Witnesses have access to someone on campus who can help them navigate the process of an investigation and hearing under AR 6:2, the University should have employees who serve as "case managers" for both Respondents and Complaining Witnesses through the process. Other universities across the United States have adopted this model, employing case managers who serve as point person for issues of the process itself, but who also assist the Respondent or Complaining Witness with a variety of other issues that arise in the course of the investigation or hearing. For instance, either the Respondent or Complaining Witness may need assistance with course schedules, housing arrangements, office arrangements, or other things related to the investigation and/or hearing. Currently this role is played by the VIP Center (for Complaining Witnesses) and the Office of the Institutional Equity and Equal Opportunity (for both Complaining Witnesses and Respondents). The Committee believes that separate employees should serve the roles of Complaining Witness Case Manager and Respondent Case Manager. The Complaining Witness Case Manager might have a primary appointment in the VIP Center while the Respondent Case Manager might have a primary appointment in the Office of the Academic Ombud. We recommend that this process be formalized, either in the current roles, or with new positions created to cover these responsibilities. These case managers might work closely with (or under) the University Community of Concern. (*See revised AR 6:2, Section IV "Definitions," Part H, page 4.*) The Committee understands that a similar organization is in place at the University of Tennessee, and recommends that UK model its case manager structure on that example. (*See [Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation](#), Section 1.4 "Sexual Assault Response Team," page 5.*)
8. Under the current version of AR 6:2 support persons do not have to be a lawyer, but many of the participants in hearings under the current AR have had lawyers serve as support persons. Under the current AR, the University is represented, in

the case of student Respondents, by the Dean of Students. (This structure would change, under another of our proposals.) The current Interim Dean of Students is Nick Kehrwald, and, while he is not a practicing attorney, he has a law degree. The Committee has heard expressions of concern about the inequality introduced by having the University effectively represented by a lawyer, while the student Respondents do not have access to a lawyer if they cannot afford one. Several universities across the country have created a pool of funds to be made available to both Complaining Witnesses and Respondents to cover at least a portion of the costs associated with hiring an attorney to assist the individual in preparing for the hearing, and during the hearing itself. We propose that the University create a pool of funds, capped at a certain amount, for both the Respondent and the Complaining Witness to hire legal representation to assist with the investigation/hearing process at the University of Kentucky. This funding would not be available to cover the costs of legal representation for any civil or criminal proceeding outside of the University. The University could also provide a list of possible attorneys available to assist Respondents and Complaining Witnesses, although those accessing the funds should be able to select legal representation from people not included on the University's list. In addition to a cap on the total amount of funding a Respondent or Complaining Witness could receive from the pool, the University should set an hourly cap on the amount an attorney could receive for this work. That cap should be set in accordance with state law.

9. Currently the Respondent and Complaining Witness may each bring up to two support persons along to the hearing, but those support persons may not actively participate in the hearing. (See [existing AR 6:2](#), Section IV "Definitions," Part U, page 6; [existing AR 6:2](#), Appendix, Section II, Part X, page 16.) Specifically, support persons may not speak in the hearing, and may only confide confidentially with the person they are supporting. We propose opening this up to full participation of the support persons with regard to everything except direct examination of the opposing party. (See revised AR 6:2, Section IV "Definitions," Part II, page 9.)
10. In order to unify the hearing process, the Committee recommends that the University should have one representative who brings the University's case in any hearing brought under AR 6:2, regardless of the identity of the Respondent or the Complaining Witness. Current AR 6:2 identifies a University Representative, but does not identify who fills this role. In practice, the Interim Dean of Students brings the case when the Respondent is a student. Because there has not yet been a hearing under AR 6:2 for an employee Respondent under the current AR, the General Counsel's office has not had to address the question of who would serve in this capacity in a hearing with an employee Respondent. The Committee's recommendation is that the new "University Representative" should not sit in the Office of Institutional Equity and Equal Opportunity, thereby staying out of the investigative phase of the procedures, and should have no authority to alter the finding and sanctions recommendation of the Hearing Panel. (This is not the model under the current AR 6:2, where the Dean of Students brings the

University's case against a student Respondent, and also has the right to modify the Hearing Panel's recommended sanction against any student Respondent). The Committee's recommendation is that the new University Representative should be a member of the General Counsel's office. (See revised AR 6:2, Section IV "Definitions," Part MM, page 9.)

11. The current AR 6:2 indicates that the Hearing Panel will be composed of three members, drawn from a Hearing Panel Pool composed of both faculty and staff. (See [existing AR 6:2, Appendix, Section II "Definitions," Part S, page 15](#); [existing AR 6:2, Appendix, Section II "Definitions," Part T, page 15](#).) In order to ensure sufficient independence, in light of the fact that the University brings the case against the Respondent, the Committee recommends that the Hearing Panel should always be composed of at least two tenured faculty members. If the Respondent or Complaining Witness is a staff Employee, the third person should be a staff member from the Hearing Panel Pool. In all other cases, either another faculty Employee or a staff Employee can serve as the third member of the Hearing Panel. (See revised AR 6:2, Section XIV "Formal Hearing Procedures," Part C, page 16.) The Committee is aware that such a change will require getting more Employees to volunteer as members of the Hearing Panel Pool. In particular, the Hearing Panel Pool will need a larger contingent of tenured faculty members. Therefore, the Committee encourages all Employees to consider volunteering to join the Hearing Panel Pool. The Committee considered the possibility of adding student members to the Hearing Panel Pool, but having student members violates Title IX. In addition, the Committee believes that the presence of students on Hearing Panels would be likely to have a chilling effect on reporting under AR 6:2, and could prove to be detrimental to the ultimate goals of the policy. The Committee is also concerned about the potential risks of liability for Hearing Panel members, which seems especially concerning in the case of students.
12. Current AR 6:2 says that the decision of the Hearing Panel regarding sanctions is a recommendation that can be changed by the Dean of Students, in case of a student Respondent, or "appropriate unit administrator," in the case of an employee Respondent. (See [existing AR 6:2, Appendix, Section VII "Formal Hearing Procedures," Part 18, page 20](#).) The Committee viewed this as a problem, since if our procedures are sufficiently robust, the Committee thinks the decision of the Hearing Panel should stand. The proposed changes to the Regulations allow the Dean of Students, in the case of a student Respondent, or the Appropriate Unit Administrator, in the case of an employee Respondent, to request that the Hearing Panel reconsider the recommended sanction in light of either (1) perceived incommensurability between the accused violation and the proposed sanction, or (2) unforeseen or unintended consequences on the workplace or student life space of the Respondent, including any potential consequences to third parties. Other than this ability to request a reconsideration, the Dean of Students or Appropriate Unit Administrator will have no additional ability to change the sanction recommended by the Hearing Panel. (See revised

AR 6:2, Section XIV “Formal Hearing Procedures,” Part D “Hearings,” Part 18, page 18.)

13. The Committee had a long discussion about the appropriate standard of evidence for the Hearing Panel to use in these cases. Current AR 6:2 requires a “preponderance of the evidence” (50.1%) for a Respondent to be held responsible. (See [existing AR 6:2, Appendix, Section VII “Formal Hearing Procedures,” Part D “Hearings,” Part 15, page 20.](#)) The Committee considered the possibility of introducing a standard of “clear and convincing evidence”, which would be a higher standard. The AAUP argues for using this higher standard in cases like this. The current Secretary of Education Betsy DeVos recently suggested a change to the clear and convincing evidence standard may soon be required by the federal government. The Committee considered the alternatives, but currently all universities use “preponderance of the evidence” for Title IX and other civil rights cases. Given this information, in addition to our understanding that the preponderance of the evidence standard is the current standard requested by the Department of Education, the Committee recommends leaving the standard of evidence the way it is in the current Regulations. If the federal guidance changes, the committee would support a change to the standard of clear and convincing evidence.
14. Members of the Senate Council asked our Committee to reconsider the recommended sanctions under AR 6:2, asking in particular if revocation of degree is an appropriate sanction. Our committee believes revocation of degree may, in certain circumstances, be an appropriate sanction. If a violation of AR 6:2 is committed shortly before graduation, and the Respondent is found responsible, revocation of degree is the only available sanction, since this person would no longer be on campus. Further, this strong sanction will serve as a disincentive to the worse offenses under this AR. We believe revocation of degree is an available sanction for the most egregious offenses under the Student Code of Conduct as well, and we believe that sanction should remain available under AR 6:2 as well.
15. Any determination by a Hearing Panel can be appealed to a panel of the Sexual Misconduct Appeals Board. The current AR 6:2 prescribes that the SMAB Panel be composed of the Chair plus two additional members of the SMAB Pool. (See [existing AR 6:2, Appendix, Section VII “Formal Hearing Procedures,” Part C, page 19.](#)) For the same reasons as those described regarding the composition of the Hearing Panel, the Committee recommends that the Chair of the SMAB be a tenured faculty member, and that the SMAB Panel be composed of the Chair, plus one other tenured faculty member. If the Respondent or Complaining Witness is a staff Employee, then the third member of the SMAB Panel should be a staff Employee. If neither the Complaining Witness nor the Respondent is a staff Employee, then the third member of the SMAB Panel may be either a faculty Employee or a staff Employee, however if the Respondent is a Student, then the

SMAB Panel must be comprised entirely of University Appeals Board (“UAB”) members. (See revised AR 6:2, Section XIV “Formal Hearing Procedures,” Part C “AR 6:2 Hearing Panel,” page 16.)

16. The current Regulations are inconsistent with GR XI regarding the make up of the SMAB. (See [existing AR 6:2, Appendix, Section II “Definitions,” Part S “Sexual Misconduct Hearing Panel Pool,”](#) page 15; [existing AR 6:2, Section IX “Appeals to the University Sexual Misconduct Appeals Board \(SMAB\),”](#) Part A, page 21; See [existing GR IX, Section D “Composition of the University Appeals Board,”](#) page 3.) The SMAB, when hearing appeals from the Hearing Panel regarding a student Respondent, should be a faculty subset of the UAB, and the chair of the UAB should be the chair of the SMAB. Additional non-UAB members of the SMAB pool may hear appeals from employee Respondents. We understand that, at least with regard to the make up of the SMAB pool, the above is happening in practice. The proposed changes to AR 6:2 make clear that this should happen going forward. (See revised AR 6:2, Section XIV “Formal Hearing Procedures,” Part C “AR 6:2 Hearing Panel,” page 16; Revised AR 6:2, Section IV “Definitions,” Parts C and D, page 3.)

17. The Committee considered a variety of difficult issues related to the preservation, use and access to records of past complaints or hearings under AR 6:1 and 6:2 that might pertain to a new complaint or hearing under AR 6:2. Current AR 6:2 makes no reference to this issue, although it does state that past disciplinary records can be considered by the Hearing Panel during the sanctioning phase, once a determination of responsibility has been made. (See [existing AR 6:2, Appendix, Section VII “Formal Hearing Procedures,”](#) Part C, Part 16, page 20.)

The Committee recommends that if a Hearing Panel reaches a determination of no responsibility, then that complaint, hearing, and/or determination should not be used in any future investigation, hearing or sanction. The Committee was primarily concerned about the creation of prejudicial conditions towards a Respondent. A dissenting member of the Committee raised the possibility that a Respondent might wish to introduce evidence of past false and harassing accusations, to support a defense against a new false, harassing complaint.

If there is a finding of responsibility by the Respondent at any point (either an admission of responsibility, or a finding by a Hearing Panel), the Committee determined that this might appropriately be considered in future investigations, hearings, and sanctioning determinations.

In considering how and whether records of a previous complaint may be used if the complaint was closed before a hearing, the Committee recognizes that finding evidence related to a subsequent complaint may depend on the emergence of a pattern of behavior. Under new AR 6:2, a previous complaint, even if it were closed without a hearing, may be grounds for investigation of a new complaint, even if the Complaining Witness does not want to proceed. (See revised AR 6:2, Section XIV “Formal Hearing Procedures,” Part D “Hearings,” Part 20, page 18.) However, the Committee also discussed concerns about not creating a

prejudicial environment for a Respondent, and urges caution with respect to the use of previous complaints that were closed before a hearing.

Finally, the Committee agreed that if any files are accessed after a case is closed, the Respondent should be notified and have access to the files. The Committee recognizes that notifying the Respondent about a complaint could have a chilling effect on reporting, but the Committee is concerned that lack of notice could have a detrimental effect on the Respondent's rights to be aware of accusations against him or her. (*See revised AR 6:2, Section XIV "Formal Hearing Procedures," Part D "Hearings," Part 21, page 18.*)

18. Service on the UAB, the AR 6:2 Appeals Board, or in the AR 6:2 Hearing Panel Pool is a very important activity in University service. We ask the Senate Council to urge upon the University administration that time assigned these University-level service activities be shown on the faculty DOE and be considered as part of staff responsibilities, and that this work be valued by supervisors in employee performance reviews.

Conclusion

The above recommendations reflect the thoughts and efforts of the Committee over the past year. We welcome the opportunity to discuss this material with members of the campus community and various stakeholders. We thank the University Administration and the Senate Council for the opportunity to carefully study this important matter, and to provide feedback. We look forward to continuing conversations on this matter.

RELATED DOCUMENTS

Federal Laws and Policies

Title IX of the Education Amendments of 1972, and its implementing regulation at 34 C.F.R. Part 106 (Title IX)

Dear Colleague Letter 04-11-2011

2014 OCR [Frequently Asked Questions on Title IX and Sexual Violence](#)

AAUP

[Campus Sexual Assault: Suggested Policies and Procedures 2012](#)

[The History, Uses and Abuses of Title IX July 2016](#)

Regulations

[GR XI \(05-08-2016\)](#)

[AR 6:2 \(09-04-2007 draft to Senate Council 2008\)](#)

[AR 6:2 \(09-30-2014\)](#)

[AR 6:2 \(12-03-2014\)](#)

[AR 6:2 \(06-19-2015\)](#)

[AR 6:2 Appendix Draft to BoT May 8 2015](#)

[AR 6:2 \(06-10-2016\)](#)

[AR 1:6 \(05-06-2011\)](#)

[AR 1:6 \(Process Flow Chart\)](#)

[AR 6:1 \(07-01-2008\)](#)

[AR 4:10 \(06-24-2016\)](#)

[Draft Questionnaire](#)

BoT Meetings

[BoT 05-08-2015 partial transcript](#)

Senate/Senate Council Meetings

[SC Minutes 08-18-2018](#)

[SC Minutes 12-07-2015](#)

[SC Minutes 10-05-2015](#)

[SC Minutes 01-25-2016](#)

[SC Minutes 06-17-2016](#)

[SC Minutes 09-19-2016](#)

[SC Minutes 12-19-2016](#)

[Senate Minutes 09-12-2016](#)

[Senate Rules and Elections Committee Minutes 11-19-2015](#)

Correspondence

[President to BoT 05-08-2015 re: AR 6:2 ‘Appendix to Sexual Harassment Policy draft’](#)

[General Counsel Thro to Faculty Trustee Grossman 05-13-2016](#)

[President to University 09-21-2016](#)

[General Counsel Thro to Committee Chair Bird-Pollan 12-19-2016 Overview of Due Process in University](#)

[General Counsel Thro to University Community 03-15-2015 re AR 6.2 \(version 12-03-2014\)](#)

[General Counsel Thro to University Community 09-29-2016 re AR 6.2 \(version 06-10-2016\)](#)

[Associate General Counsel to Provost 01-13-2012](#)

[Dec 22 2016 Letter to University Faculty from SC Chair re AR 6-2](#)

Court Decisions

[Jane Doe vs. UK 5:15-cv-00296-JMH Aug. 31 2016](#)

Meetings of Ad Hoc Committee on AR 6.1 and AR 6.2

[10-18-2016 call for organizational meeting](#)

[Notes taken of presentation of Dr Robert Lawson to AR 6-2 committee](#)

Additional Documents

[Miltenberg and Byler 2016](#)

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UNIVERSITY OF
KENTUCKY[®]
Regulations

Administrative Regulation 6:2

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

Date Effective: __/__/2017

Supersedes Version: 6/10/2016

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

Index

[I. Introduction](#)

[II. Policy](#)

[III. Scope](#)

[IV. Definitions](#)

[V. Prohibited Acts](#)

[VI. Reporting Complaints](#)

[VII. Rights of the Complaining Witness and the Respondent](#)

[VIII. Corrective Actions and Disciplinary Procedures](#)

[IX. Education](#)

[X. Initiating a Complaint and Investigation Process](#)

[XI. Interim Remedies](#)

[XII. Notice and Administrative Measures](#)

[XIII. Informal Resolution Option](#)

[XIV. Formal Hearing Procedures](#)

[XV. Recommended Sanctions](#)

[XVI. Appeals to the AR 6:2 Appeals Board](#)

[XVII. Amendment of Procedures](#)

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, and sexual exploitation. In addition, complicity in the commission or concealment of any act prohibited by this AR 6:2, 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 are also covered under this AR 6:2. 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 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*.

II. Policy

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 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. Additionally, 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 (collectively, “prohibited conduct”). These forms of prohibited conduct are against University policy, undermine the character and purpose of the University, and will not be tolerated.

Employees or Students who violate AR 6:2 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.

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

III. Scope

- A. This AR 6:2 applies to all members of the University Community, including Employees, Students, visitors, volunteers, and Registered Student Organizations.
- B. This AR 6:2 applies to any acts of harassment, discrimination, sexual assault, stalking, dating, sexual exploitation or domestic violence, or the complicity in the commission or concealment of any of those acts that occur:
 - 1. On the University Premises 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
 - 3. Outside the context of 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. Employees 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.
 - 4. On campus or any other University owned, leased, controlled, or operated location;
 - 5. 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

6. Outside the context of 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. Employees 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.

C. This AR 6:2 applies regardless of the local laws in effect in the jurisdiction where the actions took place.

IV. Definitions

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

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, including by someone in a position of supervisory or disciplinary authority; or
6. Is less than the statutory age of consent.

b. Appropriate Unit Administrator

The *Appropriate Unit Administrator* is the Employee supervisor responsible for determining the employment duties 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 from a list submitted by the Executive Committee of the Staff Senate and the University Senate Council 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. Alternate Hearing Panel members may also be selected for any particular Hearing Panel.

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.

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, 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 source of information to a 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. The University may designate a proxy Complaining Witness, or initiate proceedings without a formal Complaint from the victim of an alleged violation of this AR 6:2.

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. Before formal proceedings commence, a formal written charge will be created and a copy of that charge must be given to both the Complaining Witness and the Respondent.

k. Complicity

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

l. 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.

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.

n. 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.

o. 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*.

p. 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.

q. 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 must remain neutral and does not vote.

s. 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 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.

w. 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.I *Discrimination*.

x. 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.

y. Respondent

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

z. 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 to the OIEEO or designee;
or
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.

aa. 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, 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 be reported to the OIEEO.

bb. 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/or to deter any subsequent violations. Sanctions shall be appropriately connected to the violation.

cc. 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) *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.

dd. 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.

ee. 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:

- i. The offensive conduct explicitly or implicitly becomes a term or condition of employment or participation in a University course, program, or activity; or
- ii. 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))

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

(d) 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. 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.

gg. 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.

hh. Support Person

Support Person means an individual who may attend an informal meeting or formal hearing to provide advice, support, or guidance to either the Respondent or the Complaining Witness. One Support Person may represent or speak on behalf of the Respondent or Complaining Witness in the proceedings of a meeting. An attorney may serve as a Support Person.

ii. Title IX Coordinator

The *Title IX Coordinator* is the University Official responsible for investigating Complaints, resolving potential violations informally, facilitating the hearing process, and recommending appropriate sanctions as defined in this AR 6:2 when violations are confirmed.

jj. University Official

University Official means any person employed or otherwise authorized by the University, performing assigned duties.

kk. University Premises

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

ll. 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. Every member of the University Community is prohibited from:
 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;
 2. Retaliating in any manner against an individual who makes a Complaint of harassment, discrimination, sexual assault, stalking, dating violence, or domestic violence;
 3. Interfering with procedures to investigate or redress a Complaint of harassment, discrimination, sexual assault, stalking, dating violence, or domestic violence; and
 4. Making an intentionally false accusation of conduct prohibited by this AR 6:2 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 as outlined in this AR 6:2.

VI. Reporting Complaints

- A. The University strongly encourages any University 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 shall report it to the Office of Institutional Equity and Equal Opportunity as soon as possible.
- 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 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, however, a formal written charge must be prepared before a formal proceeding begins. 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.
- C. Confidential reporting is allowed to the University Violence Intervention and Prevention Center, 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. The University shall provide information on pursuing criminal or other legal action, health care, counseling, and other support services available for Students, Employees, and visitors who have made a Complaint.
- E. The University shall make a good faith effort to adjudicate Complaints 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.

F. The University encourages individuals who make a Complaint, 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.

G. 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
Office of Institutional Equity and Equal Opportunity	(859) 257-8927

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. 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 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. In addition to pursuing administrative penalties and remedies, the Complaining Witness maintains the right to pursue criminal or other legal action.
3. 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) present during meetings and hearings;
5. To refuse to have an allegation resolved through conflict resolution procedures with the OIEEO;
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 processed in accordance with University procedures;
9. To be informed in writing of the outcome/resolution of the Complaint, of the sanctions (where permitted by applicable law), and of the rationale for the outcome (where permitted by applicable law);
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

- A. For Students and Employees, the University utilizes the procedures outlined in this AR 6:2 to address and resolve allegations of prohibited conduct.
- B. The recommended range of sanctions for Students are in accordance with this AR 6:2 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. Both the Complaining Witness and the Respondent shall be informed of the corrective action or disciplinary process, where permitted by applicable law.
- C. The recommended range of sanctions for Employees are in accordance with this AR 6:2 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 corrective action or disciplinary process, where permitted by applicable law.
- D. All parties have the right to appeal the decisions as detailed in this AR 6:2.

IX. Education

Regular and ongoing education on conduct covered by this AR 6:2 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 Employees. 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.

X. 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 OIEEO 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.
- B. *Confidential Reporting:* Individuals may make a confidential Complaint or report (where those receiving the Complaint are not required to report incidents to the OIEEO) to the University Violence Intervention and Prevention Center (VIP Center), the University Counseling Center (Students only), University Health Services (Students only), or the Office of Work Life (Employees 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, 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 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 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 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, or when necessary, to initiate hearing procedures as outlined below.
- D. *Investigation:* Upon receipt of a Complaint, the OIEEO (or designee) shall conduct an investigation to determine if there is enough information to support the claim of an 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

A. Interim Suspension (Students)

1. In certain circumstances, the OIEEO 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, OIEEO or authorized representative shall immediately notify the chair

of the Community of Concern. The Student shall be notified in writing by the Office of Institutional Equity and Equal Opportunity of 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 or the 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 Community of Concern 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, a 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 Community of Concern within three 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 physical, mental, or emotional 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 OIEEO, may impose an interim suspension from University Premises upon receiving a Complaint and prior to the completion of the disciplinary process. The accused Employee shall be notified in writing of 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 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.

3. An Employee under interim 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). Decisions by the SACPT or the Staff Senate Staff Issues Committee will be recommendations to the University President, who retains the final decision regarding interim remedies.

C. Other Interim Remedies Available

Interim remedies may be initiated at the beginning of the Complaint process and are not dependent on the outcome of the case. These interim remedies 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. Limitation on contact between parties (e.g., no-contact orders, no-trespass orders);
4. Referral to academic support services, such as tutoring and testing accommodations (Students);
5. Adjustments to course schedules and academic deadlines (Students) or work schedules (Employees);
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 impinge on the individual's ability to succeed in his or her academic or work efforts shall be subject to appeal.

XII. Notice and Administrative Measures

- A. The OIEEO shall notify the Respondent and Complaining Witness 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, the alleged 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 and Complaining Witness'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 OIEEO 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 OIEEO, the University Representative, the Hearing Officer and Hearing Panel members, and other witnesses. A meeting or formal hearing shall only be rescheduled for good cause.

XIII. Informal Resolution Option

Pre-Hearing Meeting: The OIEEO or its designee shall meet separately with the involved parties to: (1) read 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, pre-hearing meetings are closed meetings. If the Respondent chooses to resolve the allegation within the specified time-frame, the case will be closed, unless the Complaining Witness does not accept the informal resolution, in which case, the case shall be referred to the Hearing Officer for formal

resolution by a Hearing Panel. The Complaining Witness and the Dean of Students or Appropriate Unit Administrator(s) shall be notified of the outcome of any informal resolution.

XIV. Formal Hearing Procedures

- A. *AR 6:2 Hearing Panel Pool:* The President shall appoint up to twenty-one individuals who are tenured faculty Employees or staff Employees to serve a one year term as members of the AR 6:2 Hearing Panel Pool. Reappointment to the Hearing Panel Pool is available, with no term limits imposed. Members shall receive annual training by the Title IX Coordinator on issues related to harassment, discrimination, sexual assault, domestic violence, dating violence, sexual exploitation, and stalking. Students are not permitted to serve.
- B. *Hearing Officer:* The President shall appoint an individual who holds the degree of Juris Doctor to serve as the facilitator of hearings involving alleged violations of AR 6:2. The Hearing Officer shall be trained in issues related to harassment, discrimination, sexual assault, domestic violence, dating violence, sexual exploitation, 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. The Hearing Officer must maintain neutrality with regard to the substance of the complaint.
- C. *AR 6:2 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.
- 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, the University Representative shall present the case on behalf of the University. The rights of the University Representative shall be same as those of the Complaining Witness. The burden of proof shall rest with the University Representative.
 - 2. The University Representative and the Respondent shall submit to the Hearing Officer the following information: any documentation they wish to present at the hearing, the name(s) of any Support Person(s) and whether any Support Person is an attorney, a preliminary list of questions, and possible witnesses six 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. The Respondent or the Complaining Witness may request to postpone the hearing for reasonable cause. The Respondent or Complaining Witness 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. The Hearing Officer may accept or deny the request, after considering the nature of the request and the incident at issue.

4. The OIEEO shall arrange the attendance of witnesses who are members of the University Community, if reasonably possible. The Respondent, Complaining Witness, and University Representative are responsible for arranging the attendance of witnesses who are not members of the University Community.
5. The OIEEO, 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 business days prior to the hearing. The formal hearing file provided to the parties shall contain the OIEEO's investigative report, a list of witnesses, the preliminary questions submitted by parties, but not the questions proposed for the opposing party, 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 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 Complaining Witness 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, nor may the Support Persons (including attorneys) representing the Respondent and Complaining Witness cross-examine the Respondent or Complaining Witness. Instead, the Respondent, the Complaining Witness and their Support Persons may submit questions to the Hearing Officer to ask cross-examination 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 Support Persons of their choice. Support Persons may communicate privately with the person they support during the hearing, and may 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 Complaining 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 University Representative, the Title IX Officer, the Complaining Witness, the Respondent, and their Support Person(s), if any, may attend the entirety 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 substantive, evidentiary, and procedural questions shall be addressed to and ruled upon by the Hearing Officer.
12. If the Respondent or the Complaining Witness fail to appear before the Hearing Panel without good cause, evidence regarding the allegation shall be presented and a determination of finding shall be made in the Respondent's or Complaining Witness's absence.

13. The Complaining Witness, the Respondent, or a witness may request reasonable accommodations to address concerns for their personal safety. This may include providing separate facilities, using a visual screen, or 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 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 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 is responsible for a violation of AR 6:2, the Panel shall immediately convene a supplemental proceeding to determine recommended sanction(s). During the supplemental proceeding, the University Representative, the Respondent, and the Complaining Witness 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) shall only be supplied to the Hearing Panel during the supplemental proceeding to consider sanctions. (For the policy related to consideration of any past record related to AR 6:2, seeXIV.D.20)
17. After the hearing, the Hearing Panel shall prepare a written record of its findings of fact, determination of responsibility, recommended sanctions if any, and an explanation of the rationale for its decision regarding both responsibility and sanctions. The report shall be provided to the University Representative, the Dean of Students (for Students) or the Appropriate Unit Administrator (for Employees), the Respondent, and the Complaining Witness no more than seven business days following a hearing, unless extraordinary circumstances exist that delay issuance of the written outcome.
18. The sanctions will be imposed by the Dean of Students (Students) or the Appropriate Unit Administrator (Employees). The Dean of Students or Appropriate Unit Administrator has the authority to request within three business days that the Hearing Panel reconsider its recommended sanction in two scenarios: (1) 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 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 to third 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

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, Expulsion, Revocation of Admission and/or Degree	Suspension, Termination
Dating Violence or Domestic Violence	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, Expulsion, Revocation of Admission and/or Degree	Probation (Staff), Counseling Assessment, Suspension, Termination
Stalking	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, Expulsion, Revocation of Admission and/or Degree	Probation (Staff), Written Warning, Counseling Assessment, Suspension, Termination
Sexual Exploitation	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, Expulsion, Revocation of Admission and/or Degree	Probation (Staff), Written Warning, Counseling Assessment, Suspension, Termination
Harassment	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, Expulsion, Revocation of Admission and/or Degree	Probation (Staff), Written Warning, Counseling Assessment, Suspension, Termination
Discrimination	Disciplinary Probation, Counseling Assessment, Social Restrictions, Social Suspension, Suspension, Dismissal, Expulsion, Revocation of Admission and/or Degree	Probation (Staff), Written Warning, Counseling Assessment, Suspension, Termination

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

A. *Composition:* The AR 6:2 Appeals Board consists of the Chair of the UAB 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, 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. 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 shall receive training from the Title IX Coordinator in matters related to harassment, discrimination, sexual assault, domestic violence, dating violence, and stalking.

B. *Appeal*: The Respondent, the Complaining Witness, or the University Representative may appeal the decision and/or the recommended sanction to the AR 6:2 Appeals Board.

1. All appeals shall be submitted in writing to the Chair of the UAB, or postmarked if mailed, within seven business days of the receipt of the written decision rendered by the AR 6:2 Hearing Panel.
2. The Chair of the UAB and two members of the AR 6:2 Appeals Board 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. The appeal does not include a new hearing, but rather it is a review of the original hearing. (See Section F below)
3. The Respondent or the Complaining Witness and their Support Persons 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 has appellate jurisdiction over appeals related to violations of AR 6:2 The appeal is limited to:

1. 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 AR 6:2 Appeals Board panel will determine whether the factual findings were clearly erroneous. In reviewing procedures, or 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 was found responsible.
3. Whether new information, or other relevant facts not known at the time of 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 OIEEO, the University Representative and the non-appealing party shall be notified of the appeal by the Chair of the AR 6:2 Appeals Board and shall be provided an opportunity to file a response. A response must be filed within five business days of being notified of the appeal.

F. *Appeal Record*: In considering an appeal, the AR 6:2 Appeals Board panel 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 letter of appeal; and
4. Any responses from the OIEEO, University Representative, the non-appealing party, the Dean of Students (in the case of a Student Respondent), or the Appropriate Unit Administrator (in the

case of an Employee Respondent).

- G. *AR 6:2 Appeals Board Panel Decision*: Upon review of all of the information, the AR 6:2 Appeals Board panel 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 AR 6:2 Appeals Board panel 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 not known at the time of the Hearing.
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 Decision*: The UAB Chair shall communicate the outcome in writing to the involved parties.
1. For Students, the decision of the AR 6:2 Appeals Board is final and binding upon all involved.
 2. For staff Employees, the decision of the AR 6:2 Appeals Board may be appealed pursuant to *Governing Regulations GR I.F*
 3. For faculty Employees, the decision of the AR 6:2 Appeals Board may be appealed pursuant to applicable law (KRS 164.230) and/or *Governing Regulations GR I.F* and *GR X.B.1.f*.

XVII. 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](#)