

COLLEGE FOR TECHNICAL EDUCATION PROCEDURES FOR ADDRESSING AND RESOLVING ALLEGATIONS OF SEXUAL HARASSMENT UNDER TITLE IX AND OTHER FORMS OF SEXUAL MISCONDUCT

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I. INTRODUCTION

These procedures are applicable to allegations, investigations, and adjudication of cases involving Policy and Procedures for Addressing and Resolving Allegations of Sexual Harassment Under Title IX and Sexual Misconduct.

These procedures apply in all cases involving violations of regardless of whether Respondent is a faculty employee, staff employee, or student. Although a violation of this policy is a violation of the Student Code, the Student Code explicitly provides that these procedures—not the Code’s procedures—apply when a student is accused of violations. Moreover, for staff employees, these procedures—not the Human Resources Policies and Procedures—apply when a staff member is accused of violations. Although there are procedures for the termination of a faculty employee these procedures apply for the investigation and initial determination of a faculty employee’s responsibility for a violation. If a faculty employee is found responsible for a violation, the College Director may initiate termination procedures.

II. DEFINITIONS

Definitions for these procedures are the same as the definitions in Policy and Procedures for Addressing and Resolving Allegations of Sexual Harassment Under Title IX and Other Forms of Sexual Misconduct.

III. INITIATING A COMPLAINT

A. Distinction Between Report and Formal Complaint: Making a report is not the same as filing a Formal Complaint. Individuals can make a report and receive supportive measures without filing a Formal Complaint.

B. Filing a Formal Complaint: An individual may file a formal complaint by providing the Title IX Coordinator with a signed document containing the allegations they are making and requesting an investigation. A Formal Complaint can also be initiated with the signature of the Title IX Coordinator on a written complaint.

Any individual who does not have the ability to make a complaint in writing may contact the Title IX Coordinator for assistance in filing a Formal Complaint.

C. Making a Report: Any person may report Sexual Harassment, regardless of whether the person reporting is the person alleged to be the victim of conduct that could constitute Sexual Harassment, in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

D. Confidential Reporting: Individuals may make a confidential complaint or report.

E. Anonymous Reporting: Anonymous reports may be made to the College for Technical Education director and/or assistant director; however, these persons cannot hold reports of sexual assault, stalking, dating violence, or domestic violence in confidence. In addition, certain individuals designated as Campus Security Authorities are required by law to report certain offences to the local police department. These reports are made for statistical purposes, without the inclusion of identifying information of the parties.

F. Dual Reporting: Sexual Harassment and Sexual Misconduct are both violations of College policy, federal law, and, in some cases, state or criminal law. The College encourages Complainants to make reports to both local law enforcement agencies (Lexington Police Department, Winchester Police Department, or other appropriate local law enforcement agencies) and a College official. The result of an external criminal investigation does not affect whether a violation of College policy has occurred. An external criminal investigation will not take the place of a College investigation, although a criminal investigation may supplement a College investigation. The College will not wait for the conclusion of a criminal investigation to begin conducting its own independent investigation, to take interim measures to protect the College or any member of the College community, or when necessary, initiate hearing procedures as outlined below.

IV. INVESTIGATION PROCESS

A. Notice: Upon receipt of a Formal Complaint, the College will provide the following to both the Complainant and Respondent:

(1) Notice, which will include:

a. Notice of these procedures;

b. Notice of the allegations potentially constituting Sexual Harassment or Sexual Misconduct, including the following information if known at the time:

i. The identity of the parties involved in the incident;
ii. The conduct allegedly constituting Sexual Harassment or Sexual Misconduct;
and
iii. The date and location of the alleged incident, if known.

c. A statement that Respondent is presumed not responsible for the alleged conduct;
d. A statement that a determination for responsibility is made at the conclusion of the process outlined in these procedures;

e. A statement that the Parties may have two (2) Advisors of their choice, who may be an Attorney;

f. A statement that the Parties may inspect and review evidence prior to a determination of responsibility being made;

g. A statement that knowingly submitting false statements or knowingly submitting false information is grounds for College discipline;

h. A statement that if, in the course of the investigation, the College discovers any additional allegations about Complainant or Respondent that are not included in the original notice, the College must provide notice of the additional allegations to the parties; and

i. A statement that Respondents will have two (2) business days prior to their first investigative meeting to prepare a response to the allegations. Any such response may be, but is not required to be, submitted in writing.

B. The College will investigate all allegations in the Formal Complaint.

C. *Rights of Complainant and Respondent During the Investigation.* Both Complainant and Respondent have the right to:

(1) Present witnesses, including fact and expert witnesses and other inculpatory and exculpatory evidence;

(2) Discuss the allegations under investigation or to gather and present relevant evidence;

(3) Refuse to speak to the Investigator or to answer specific questions. Refusal to speak or answer questions will not result in the investigator drawing an inference of responsibility based on the refusal to answer questions; and

(4) Be accompanied by two (2) Advisors, who may be an attorney, when meeting with the Investigator.

D. *Dismissal of a Formal Complaint:* Dismissal of a Formal Complaint for Sexual Harassment pursuant to Title IX does not preclude the College from bringing charges and taking disciplinary action against

Respondent pursuant to Administrative Regulation 1:2 for Sexual Misconduct or pursuant to Administrative Regulation 1:1, Policy on Discrimination and Harassment, or any other applicable College policy. If the College dismisses a Formal Complaint or any allegations in the Formal Complaint for any reason, the Complainant may appeal this decision to the Appeals Board. If the Formal Complaint is not dismissed in its entirety, the dismissal is not subject to appeal until the adjudication process is complete.

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

- a. Would not constitute Sexual Harassment even if proven;
- b. Did not occur in the College's education program or activity; or
- c. Did not occur against a person in the United States.

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

- a. At any time during the investigative process, Complainant notifies the Title IX Coordinator that Complainant would like to withdraw the Formal Complaint or any allegation in the Formal Complaint;
- b. Respondent is no longer enrolled in or employed by the College;
- c. Specific circumstances prevent the College from gathering evidence sufficient to make a determination as to Probable Cause; or
- d. The information gathered in the investigation is not sufficient to make a determination of Probable Cause.

E. The College may consolidate multiple Formal Complaints where the allegations of Sexual Harassment or Sexual Misconduct arise out of the same facts or circumstances.

F. An Investigator will investigate to determine if there is Probable Cause to believe Respondent committed Sexual Harassment or Sexual Misconduct. The Investigator does not make a determination of Probable Cause.

G. During the Investigative Process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests with the College.

H. During the Investigative Process, the College may not access, consider, disclose or otherwise use a party's records that are made or maintained by an attorney, physician, psychiatrist, psychologist, or other recognized professional's or paraprofessional's capacity or assisting in that capacity, and which are made and maintained in connection with the provisions of treatment to the party, unless the College obtains that party's voluntary, written consent to do so.

I. *Disclosure of Evidence and Response*: Prior to the completion of the Final Investigative Report, the College will provide each party and their advisors with an electronic or hard copy of the Preliminary Investigative Report, including all the evidence directly related to the allegations raised in the formal complaint. This includes evidence that the College does not intend to rely upon in reaching a determination regarding responsibility and inculpatory or exculpatory evidence. This does not include information related to supportive measures provided to individuals that do not impact the other party to a matter and does not include any investigative notes of the investigator. Within ten (10) calendar days of receiving the Preliminary Investigative Report, the Complainant and/or Respondent may submit a written Rebuttal or Supplementation to the Preliminary Investigative Report to the Investigator. The Investigator will consider the written responses before providing the Final Investigative Report and will include the written responses in the Final Investigative Report to the Title IX Coordinator, Respondent, and Complainant.

J. *Final Investigative Report*. An Investigator will prepare a written Final Investigative Report with a recommendation to the Title IX Coordinator as to whether Probable Cause exists. The Final Investigative Report will contain any rebuttal or supplementation provided by Complainant and Respondent.

V. INTERIM REMEDIES DURING THE INVESTIGATION PROCESS

A. Emergency Suspension

(1) The Title IX Coordinator, or their designee, may impose an emergency suspension on Respondent. The terms of the Emergency Suspension may remove Respondent from the College's education program or activity. Before doing so, the Title IX Coordinator, must: (1) undertake an individualized safety and risks analysis; (2) determine that an immediate threat to the physical health or safety of any individual arising from the allegations of Sexual Harassment or Sexual Misconduct justifies removal; and (3) provide Respondent with notice of the emergency suspension and opportunity to challenge the emergency suspension. The Title IX Coordinator's analysis, determinations, and notice must be in writing.

(2) Because the emergency suspension provisions are mandated by federal regulation, the Emergency Suspension provisions preempt the College's governing and administrative regulations for the suspension of faculty and staff Respondents.

(3) For faculty and staff Respondents, any Emergency Suspension will be Administrative Leave with pay. Employees who are classified as non-exempt employees will be paid for hours they are regularly scheduled to work including back pay.

(4) The individual may appeal the Emergency Suspension to the College director (faculty employee), College Director or Assistant College Director (students), or College Director (staff employee) in writing within seven (7) calendar days of the notice of the Emergency Suspension. Any Emergency Suspension remains in effect during the appeal.

(5) The College Director and Assistant College Director may reverse or modify the suspension. The decision of the College Director and the Assistant College Director regarding the Emergency Suspension is final.

(6) The possibility of an Emergency Suspension does not diminish Respondent's rights under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973.

B. Supportive Measures Available

Supportive Measures that may be initiated at any time and are not dependent on the outcome of the case include, but are not limited to:

- (1) Referral to off-campus resources, such as counseling;
- (2) Alteration of the workplace or workstation (employees) situation for the Complainant or Respondent;
- (3) Removing an employee from the work setting or College premises (See Emergency Suspension);
- (4) Limitation on contact between parties (e.g. no-contact orders, no-trespass orders);
- (5) Referral to academic support services, such as tutoring and testing accommodations (students);
- (6) Adjustments to course schedules and academic deadlines (students) or work schedules (employees);
or
- (7) Other appropriate remedies based on each individual situation.

Supportive measures are not subject to appeal.

VI. DETERMINATION OF PROBABLE CAUSE

A. After reviewing the Final Investigative Report, the Title IX Coordinator, or their designee, will determine whether there is Probable Cause to believe Respondent committed Sexual Harassment or Sexual Misconduct.

B. If the Title IX Coordinator, or their designee, concludes there is not Probable Cause to believe Respondent committed Sexual Harassment or Sexual Misconduct, the Title IX Coordinator will state this conclusion in writing and notify both the Complainant and Respondent. The Complainant may appeal this decision to the Appeals Board. If the Formal Complaint is not dismissed in its entirety, the dismissal is not subject to appeal until the adjudication process is complete.

C. Alternatively, if the Title IX Coordinator, or their designee, concludes there is Probable Cause, then the Title IX Coordinator, will prepare a written statement of charges and present this written statement of charges to both the Complainant and Respondent.

D. The written statement of charges will include a summary of the complaint, the alleged policy violation(s), the date and time of the pre-hearing meeting, and, if applicable, interim restrictions or supportive measures.

For allegations involving individuals, the statement of charges will be sent to Respondent's and Complainant's personal email address no less than five (5) calendar days prior to a scheduled pre-hearing meeting. Failure to read and comply with the statement of charges is not suitable grounds for an appeal.

In scheduling a pre-hearing meeting, the Title IX Coordinator, or their designee, considers the availability of Respondent, Complainant, and their respective Advisors, based on Complainant and Respondent's class schedules, if students, and work schedules, if employees.

E. Pre-Hearing Meetings: The Title IX Coordinator, or their designee, will meet with Respondent and Complainant separately to: (1) discuss the hearing process; and (2) attempt to resolve the matter without conducting a live hearing. These meetings will occur separately. With the exception of Advisors, prehearing meetings are closed meetings. If Respondent chooses to resolve the allegation during the meeting, the case will be closed, and the appropriate unit administrator(s) will be notified. If the allegation is not resolved during the meeting, the case will be referred to the Hearing Officer for resolution by a Hearing Panel.

VII. NOTICE OF HEARING AND ADMINISTRATIVE MEASURES

A. For allegations involving individuals, Notices will be sent to Respondent's and Complainant's personal email addresses no less than five (5) calendar days prior to a scheduled pre-hearing meeting. Failure to read and comply with the Notice is not suitable grounds for an appeal.

B. The Title IX Coordinator, or their designee, schedules hearings. In scheduling a hearing, the Title IX Coordinator, or their designee, considers the availability of Respondent, Complainant, their respective Advisors, College Counsel, the Hearing Officer, and the Hearing Panel.

VIII. MEDIATION

If the Title IX Coordinator, or their designee, concludes there is Probable Cause, the Complainant or the Respondent may choose to pursue mediation in lieu of a formal resolution. If the Title IX Coordinator, or their designee, agrees to mediation, the Title IX Coordinator, or their designee, must obtain the voluntary written consent of both Complainant and Respondent.

The Title IX Coordinator, or their designee, may not pursue mediation in any situation where an employee is alleged to have committed Sexual Harassment or Sexual Misconduct against a student.

Under no circumstances will a Mediation Agreement involve the payment of money from the College to Respondent or Complainant or from Respondent to Complainant.

IX. LIVE HEARING PROCEDURES

A. Pre-hearing Deadlines: All deadlines below are counted in calendar days. In the event a deadline falls on a weekend or College recognized holiday, the deadline is altered to the next business day.

(1) No later than fourteen (14) days prior to a scheduled hearing, the parties will have access to all exculpatory and inculpatory evidence.

(2) No later than ten (10 days) prior to a scheduled hearing, College Counsel, Complainant, and Respondent must submit the following to the Hearing Officer or their designee:

- a. Challenges to any Hearing Panel Member,
- b. Any information they wish to present at the hearing,
- c. The name(s) of their Advisor(s),
- d. A preliminary list of questions or topics they wish to ask of the other party, and
- e. A possible list of witnesses and the subject(s) on which they are expected to testify.

Except where allowed 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 will review the information submitted to eliminate any redundant, irrelevant, or prejudicial information.

(3) At any time prior to the hearing, College Counsel, Complainant, or Respondent may request to postpone the hearing. The Hearing Officer may accept or deny the request after considering the nature of the request and the incident at issue.

(4) No later than three (3) days prior to the hearing, the Complainant, Respondent, College Counsel and the Hearing Panel will receive a copy of the hearing file.

- a. The hearing file for Complainant, Respondent, and College Counsel will include the following:
 - i. The Final Investigative Report,
 - ii. The Probable Cause determination,
 - iii. A list of witnesses,
 - iv. Preliminary questions submitted by parties, and
 - v. Any other related information
- b. The hearing file for the Hearing Panel will include the following:
 - i. Information about the parties,
 - ii. A list of possible witnesses,
 - iii. The charged policy violations,
 - iv. The date and location of the charged violation, and
 - v. Any other related information.

B. Selection of Hearing Panel

(1) *AR Hearing Panel:* Three (3) randomly selected members of the Hearing Board will determine responsibility for the charged policy violation. However, the Hearing Officer will randomly select four (4) members from the Hearing Board to hear each matter. At the conclusion of the presentation of evidence, one of the four (4) members will be excused as an alternate.

(2) *Conflicts of Interest:* Any member of the Hearing Panel who has a conflict of interest must immediately recuse themselves by notifying the Hearing Officer and Title IX Coordinator, or their designee, of their conflict of interest and intent to recuse. Conflicts of interest include, but are not limited to, personal knowledge of the facts and circumstances of the allegations or having a family, personal, faculty/student, or professional relationship with either Complainant or Respondent.

(3) *Challenge to Hearing Panel Members:* College Counsel, Complainant, or Respondent may challenge any Hearing Panel Member for Cause if there is a belief that a member of the Hearing Panel has a conflict of interest. Challenges to the Hearing Panel Members must be made no later than ten (10) calendar days prior to the hearing. The Hearing Officer will determine if cause exists and will excuse any Panel Member where Cause exists. Under no circumstance will a Hearing Panel Member be excluded for a reason that would violate the College's Policy on Discrimination and Harassment.

(4) *Selection of Additional Members:* If a Hearing Panel Member recuses themselves or if the Hearing Officer excuses a Panel Member for Cause, the Hearing Officer will randomly select additional members from the Hearing Board.

C. *Access to Evidence:* Prior to the live hearing, Respondent, Complainant, and College Counsel will have access to all exculpatory and inculpatory evidence. Such access to evidence does not include review of the notes of the Investigator, the notes of the Title IX Coordinator, recordings of investigatory meetings, or information obtained that is not relevant to the charged allegations. Such access to evidence will be given at least fourteen (14) calendar days before the live hearing.

D. *Investigative Report:* Unless Respondent, Complainant, and College Counsel stipulate, no portion of the Investigative Report, the Rebuttal, or any Supplementation is admissible in the hearing and, absent stipulation, the Hearing Panel will not see the Final Investigative Report.

E. *Location of Hearing:* The College may conduct the live hearing with all Parties physically present in the same geographic location or any Parties, witnesses, or other participants may appear virtually as long as all participants can simultaneously see and hear each other. For the duration of the global health crisis caused by COVID-19 and until the College is satisfied the health and safety of participants can be protected otherwise all live hearings will be conducted virtually.

F. *Record of Hearing:* The College must create an audio or audiovisual recording or transcript of any live hearing. Copies of the recording or transcript must be made available upon request to College Counsel, Complainant, and Respondent.

G. *Live Hearings:* Live hearings will be conducted by the Hearing Officer according to the following procedures:

(1) 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 who disrupts or obstructs the hearing to leave the hearing. All questions of law, whether substantive, evidentiary, or procedural, will be addressed to and ruled upon by the Hearing Officer. The Hearing Officer does not have authority to dismiss allegations made.

(2) The hearing will be closed to the public. Complainant, Respondent, their respective Advisor(s), and College Counsel are allowed to attend the entire portion of the hearing, excluding Hearing Panel deliberations.

(3) Witnesses other than Complainant and Respondent will be excluded from hearings, except for the period of their own testimony.

(4) Given the nature of these incidents, and the impact on the overall College community, the College, through College Counsel, has the burden of proving that Respondent has violated College policy. Respondent is presumed not responsible for the alleged conduct. While Complainant plays an integral part of the process and the proof of the College's case, it is the responsibility of the College— through College Counsel—to prove by a Preponderance of the Evidence that Respondent committed Sexual Harassment or Sexual Misconduct. The Complainant has no responsibility other than to appear as a witness.

(5) The Title IX Coordinator, or their designee, will arrange the attendance of witnesses who are members of the College community, if reasonably possible. The Respondent and College Counsel are responsible for arranging the attendance of witnesses who are not members of the College community.

(6) The Title IX Coordinator, or their designee, in consultation with the Hearing Officer, will create the live hearing file.

(7) Complainant and Respondent have the right to be assisted by up to two (2) Advisor(s), including attorneys, of their choice. Attorneys who are representing a Complainant, a Respondent, or the College may actively participate in the hearing. Non-attorney Advisor(s) are not permitted to participate directly in any hearing because participation in a live hearing may be regarded as the practice of law in Kentucky. Non-attorney advisors may communicate privately with the person they support during the hearing.

(8) College Counsel, Complainant, and Respondent have the right to call relevant and necessary witnesses and to present evidence.

(9) College Counsel, Complainant's Advisor, if an Attorney, and Respondent's Advisor, if an Attorney, may ask the Complainant, Respondent, and any other witnesses all relevant questions and follow-up questions, including questions challenging credibility.

(10) College Counsel, Complainant's Advisor, if an Attorney, and Respondent's Advisor, if an Attorney, may conduct cross-examination of all parties and all witnesses directly, orally, and in real time. Neither the Complainant nor Respondent may conduct cross-examination personally. Only the Advisors who are attorneys may conduct cross-examination

(11) Only relevant cross-examination and other questions may be asked of a party or witness. Before Complainant, Respondent, or witness answers a question, the Hearing Officer must first Administrative Regulation 1:2 determine whether the question is relevant and explain any decision to exclude a question as not relevant.

(12) Complainant, Respondent, or any witness may refuse to appear and/or exercise their Fifth Amendment right against self-incrimination. The Hearing Panel must not draw an inference about the determination regarding responsibility based solely on a Party or witnesses' absence from the live hearing or refusal to answer cross-examination or other questions.

(13) If a Complainant, Respondent, or any witness testifies on direct examination but does not submit to cross-examination, the Hearing Panel must not rely on any statement of that individual in reaching a determination regarding responsibility.

(14) Unless a party explicitly waives the privilege in writing, the Hearing Officer will not allow questions or evidence constituting or seeking the disclosure of information protected under a legally recognized privilege.

(15) Questions and evidence about Complainant's sexual predisposition or prior sexual behavior are not relevant unless (1) such questions and evidence about Complainant's prior sexual behavior are offered to prove that someone other than Respondent committed the conduct alleged by Complainant, or (2) if the questions and evidence concern specific incidents of Complainant's prior sexual behavior with Respondent and offered to prove consent. This standard is mandated by federal regulations and preempts any contrary Kentucky law.

(16) At the conclusion of the live hearing, the Hearing Officer will instruct the Hearing Panel on the Preponderance of the Evidence standard and any other matters that the Hearing Officer deems necessary to the Hearing Panel's determination.

(17) After the Hearing Panel has reviewed the evidence presented at the hearing, the Hearing Panel will determine whether Respondent has committed Sexual Harassment or Sexual Misconduct. The Hearing Panel's determination will be made based on the Preponderance of the Evidence standard.

(18) If the Hearing Panel determines that Respondent is responsible for the violation, the finding must be unanimous. If any member of the Hearing Panel believes there is not a Preponderance of the Evidence for responsibility, then Respondent must be found not responsible.

(19) When a Hearing Panel determines Respondent is responsible for Sexual Harassment or Sexual Misconduct, the Panel will immediately convene a supplemental proceeding to determine a recommended sanction(s). During the supplemental proceeding, Respondent, College Counsel, and Complainant may submit relevant evidence or make relevant statements regarding the appropriateness of a specific sanction. The past disciplinary record of Respondent may only be supplied to the Hearing Panel during the supplemental proceeding to consider sanctions.

The Hearing Panel must adopt a written determination that includes:

- a. Identification of the allegations potentially constituting Sexual Harassment or Sexual Misconduct;
- b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications of the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- c. Findings of fact supporting the determination;
- d. Conclusions of law regarding the application of this Regulation;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- f. A statement describing the recommended sanction;
- g. A statement as to whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided to Complainant; and
- h. The College's provisions for appeal.

(20) The Hearing Panel's Determination of Responsibility and Recommendation of Sanction will be provided simultaneously to both Complainant and Respondent.

(21) The sanctions will be ultimately determined and imposed by the College Director/Asst. College Director (for students), the College Director (for faculty and staff). The College Director/ Asst. College Director (for students), the College Director (for faculty and staff) are not limited to sanctions recommended by the Hearing Panel.

(22) The College Director/ Asst. Director (for students), the College Director (for faculty and staff) do not have the authority to overturn or modify the Hearing Panel’s findings of responsibility. Only the Appeals Board may overturn the Hearing Panel’s findings of responsibility.

(23) Regardless of the Sanction imposed, the College Director/ Asst. Director (for students), the College Director (for faculty and staff) will provide a written statement describing the recommended sanction and whether remedies designed to restore or preserve equal access to the College’s education program or activity will be provided to Complainant. This written statement will be provided simultaneously to Complainant and Respondent and College Counsel.

X. RECOMMENDED SANCTIONS

The chart below outlines the recommended sanctions for specific acts of Sexual Harassment. Additional sanctions not specifically listed below may also be imposed when appropriate.

	Recommended Range of Sanctions (STUDENTS)	Recommended Range of Sanctions (EMPLOYEES)
Sexual Harassment: Quid Pro Quo	Disciplinary Probation, Counseling Assessment, Social Restrictions, Suspension, Expulsion	Probation, Written Warning, Counseling Assessment, Suspension, Termination
Sexual Harassment: Hostile Environment	Disciplinary Probation, Counseling Assessment, Social Restrictions, Suspension, Expulsion	Probation, Written Warning, Counseling Assessment, Suspension, Termination
Sexual Harassment: Sexual Assault	Suspension, Expulsion	Suspension, Termination
Sexual Harassment: Dating Violence or Domestic Violence	Disciplinary Probation, Counseling Assessment, Social Restrictions, Suspension, Expulsion	Probation, Written Warning, Counseling Assessment, Suspension, Termination
Sexual Harassment: Stalking	Disciplinary Probation, Counseling Assessment, Social Restrictions, Suspension, Expulsion	Probation, Written Warning, Counseling Assessment, Suspension, Termination

The chart below outlines the recommended sanctions for specific acts of Sexual Misconduct. Additional sanctions not specifically listed below may also be imposed when appropriate.

	Recommended Range of Sanctions (STUDENTS)	Recommended Range of Sanctions (EMPLOYEES)
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Sexual Misconduct: Sexual Assault	Suspension, Expulsion	Suspension, Termination
Sexual Misconduct: Dating Violence or Domestic Violence	Disciplinary Probation, Counseling Assessment, Social Restrictions, Suspension, Expulsion	Probation, Written Warning, Counseling Assessment, Suspension, Termination
Sexual Misconduct: Stalking	Suspension, Expulsion	Suspension, Termination
Sexual Misconduct: Sexual Exploitation	Disciplinary Probation, Counseling Assessment, Social Restrictions, Suspension, Expulsion	Probation, Counseling Assessment, Suspension, Termination

XI. APPEALS TO THE APPEALS BOARD

A. *Jurisdiction*: The Appeals Board has appellate jurisdiction over appeals related to Sexual Harassment and Sexual Misconduct. Because the Code of Student Conduct explicitly provides that these procedures—not the Code’s procedures—apply when a student is accused of Sexual Harassment or Sexual Misconduct, the Appeals Board, not the College Appeals Board, will hear appeals of students who have been found responsible for Sexual Harassment or Sexual Misconduct

B. *Appellate Deadlines*: The following deadlines are applicable to all appeals. Dates are calculated in calendar days. In the event, a deadline falls on a weekend or College recognized holiday, the deadline falls on the next business day.

(1) No later than fourteen (14) days after the Hearing Panel’s written decision, Dismissal of a Formal Complaint, or the Title IX Coordinator’s finding that Probable Cause does not exist, a Notice of Appeal must be filed with the Appeals Board Chair.

(2) Within fourteen (14) days of the filing of the Notice of Appeal, the party initiating the appeal must file their Opening Brief with the Appeals Board Chair.

(3) Within fourteen (14) days of the filing of the Opening Brief, the party responding to the appeal must file a Response Brief with the Appeals Board Chair.

(4) Within seven (7) days of the filing of the Response Brief, the party initiating the appeal may file a Reply Brief.

C. *Decisions Subject to Appeal*: A Respondent, Complainant, or College Counsel may appeal the Hearing Panel’s decision regarding the responsibility, the imposition of a particular sanction, the dismissal of allegations, or the finding of no Probable Cause for any allegation to the Appeals Board on any ground identified below in XI (D).

D. *Grounds for Appeal*: A Respondent, Complainant, or College Counsel may appeal on the following bases: (1) Dismissal of a Formal Complaint or allegation of a Formal Complaint; (2) Finding of no Probable Cause; (3) procedural irregularity that affected the outcome of the matter; (4) new evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal

was made, that could affect the outcome of the matter; (5) the Title IX Coordinator, investigators, or Hearing Panel had a conflict of interest or bias for or against Complainant or Respondent that affected the outcome of the matter; (6) the factual findings were clearly erroneous; (7) the legal conclusions are incorrect; and/or (8) a party's constitutional rights were violated.

E. *Composition of Appeals Board*: The Chair of the Appeals Board and two (2) members of the Appeals Board randomly chosen by the Chair will consider the appeal. The appeal does not include a new hearing, but rather is a review of the original decision.

F. *Conflicts of Interest*: Any member of the Appeals Board who has a conflict of interest must immediately recuse themselves by notifying the Board Chair. Conflicts of interest include, but are not limited to, personal knowledge of the facts and circumstances of the allegations or having a family, personal, faculty/student, or professional relationship with either the Complainant or Respondent. If the Chair of the Appeals Board recuses themselves, then the President will appoint a new Chair.

G. *Challenge to Appeals Board Members*. Respondent, College Counsel, or Complainant, may challenge any Appeals Board member if there is a belief that a member of the Appeals Board cannot render a fair and impartial result. The Chair of the Appeals Board will determine if cause exists and will excuse any Panel Member where cause exists. Under no circumstance will an Appeals Board Member be excluded for a reason that would violate the College's Policy on Discrimination and Harassment. If College Counsel, Complainant, or Respondent challenges the Chair of the Appeals Board for cause, the President will determine if cause exists.

H. *Appellate Procedures*: The following procedures apply to all appeals:

(1) An appeal is initiated by filing a Notice of Appeal with the Chair of the Appeals Board. The Notice of Appeal is a document filed by the party initiating the appeal (Appellant) indicating which decision they wish to appeal. The Appeals Board Chair will notify the party responding to the appeal (Appellee(s)) that an appeal has been initiated.

(2) The Appellant's Opening Brief must not exceed twenty-five (25) pages, double-spaced, with twelve point type. Prior to filing the Opening Brief, Appellant and their advisors have the right to review the hearing file, including any recording of the hearing, or the investigative report, depending on the decision being appealed.

(3) The Appellees' Response Brief must not exceed twenty-five (25) pages, double-spaced, with twelve point type. The Appellees and their advisors have the right to review the hearing file, including any recording of the hearing, or the investigative report, depending on the decision being appealed.

(4) The Appellant's Reply Brief must not exceed ten (10) pages, double-spaced.

(5) Upon request of any party, the Chair of the Appeals Board has the discretion to extend deadlines or expand page limits.

(6) After receipt of all Briefs, the Appeals Board will begin its review of the briefs and the record.

I. *Appeal Record*: In considering an appeal, the Appeals Board will conduct a review of the entire record, including but not limited to:

- (1) Notice of Dismissal;
- (2) The Final Investigative Report;
- (3) Probable Cause Determination;
- (4) The hearing file that is given to the parties prior to the hearing;
- (5) Any pre-hearing rulings from the Hearing Officer;
- (6) The written recommendations of the Hearing Panel;
- (7) The recording or transcript of the live hearing;
- (8) Any other materials admitted into evidence by the Hearing Panel; and
- (9) The Opening, Response, and Reply Briefs.

J. Appeals Board Decision: Upon review of all information applicable to the appeal, the Appeals Board has the authority to do one of the following:

- (1) Reverse the dismissal and remand for further proceedings;
- (2) Uphold the Probable Cause Determination;
- (3) Reverse the Probable Cause Determination and remand for a hearing by the Hearing Panel;
- (4) Uphold the findings and recommendations made by the Hearing Panel;
- (5) Modify the recommended sanction(s); however, the Appeals Board may not increase a penalty; or
- (6) Remand the case back to a Hearing Panel for a new Hearing.

K. Appeals Board Decision: The Appeals Board Chair will simultaneously communicate the outcome in writing to the involved parties and the Title IX Coordinator.

- (1) For students, the decision of the Appeals Board is final and binding upon all involved.
- (2) For employees, the decision of the Appeals Board may be appealed pursuant to applicable law (KRS 164.230).

XIII. AMENDMENT OF THESE PROCEDURES

The President will consult with the General Counsel, Title IX Coordinator, faculty, students, and staff before making amendments to these procedures. When changes in the law, court decisions, or federal or state regulations require immediate amendment of these procedures, the President may amend

these procedures as necessary, with consultation occurring soon after. All substantive amendments will be reported to the Board of Trustees.