

Title IX Student Sexual Misconduct Policy 2023-2024

(To be utilized If the respondent is a student and the jurisdiction requirements of Title IX are met)

Introduction

The University of Louisville prohibits all sex discrimination and Sexual Misconduct. This policy outlines expectations, reporting options, and resources for all students, employees, University visitors, or third Parties within the University community, regardless of sexual orientation or gender identity and is to be utilized if the Respondent is a student and the jurisdictional requirements of Title IX are met. If the Respondent is an employee, the complaint will be routed to University Human Resources for review and response in accordance with the University's Title IX Employee Sexual Misconduct Policy. If the Respondent is a third party, the report will be routed to the University of Louisville Police Department for resolution which may include criminal or administrative responses. Sexual Misconduct offenses include Sexual Harassment (includes quid pro quo and hostile environment); Sexual Assault; Domestic Violence; Dating Violence; and Stalking.

The University will take immediate steps to end Sexual Misconduct, prevent recurrence, and correct any effects on the Complainant or those involved in the complaint process. If, in the process of the investigation, the University determines that the alleged conduct does not fall within the scope of this policy, both the Complainant and the Respondent will be notified.

- For complaints against students, contact the Dean of Students Office at 502-852-5787.
- For complaints against employees, contact Human Resources at 502-852-6538.
- For complaints against a University visitor, contact University Police at 502-852-6111.

The Title IX Coordinator and Deputy Title IX Coordinators and their contact information are listed later in this policy. In an emergency situation, individuals should contact University Police at 502-852-6111 or call 911.

When the University has Actual Knowledge of Sexual Misconduct and the Respondent is found to be in violation of this policy, sanctions will be issued. A policy violation is not required in order to provide Supportive Measures for the Complainant reporting the concern. Possible remedies include but are not limited to the following: "no contact orders," changes to academic or living situations as appropriate, counseling services, security escort services, medical services, academic support services, and notification of the right to file a complaint with local law enforcement. The Title IX Coordinator, the Deputy Title IX Coordinators, or their designee will provide information regarding this policy; complaint resolution procedures; and offer options for addressing a complaint.

The University in enforcing this policy will not restrict any rights that would otherwise be protected by the free speech protections of the First Amendment of the U.S. Constitution or deprive a person of due process rights and/or restrict any other rights guaranteed by the U.S. Constitution.

The University will utilize the investigation, hearing, and appeals processes listed below for cases where the Respondent is a student and that meet the jurisdictional requirements of Title IX. If the case does not meet the jurisdictional requirements for Title IX, the case may be administered through the Code of

Student Conduct process. Once the University has Actual Knowledge of an alleged violation, Jurisdiction under Title IX requires that any act prohibited occur:

- Against a person within the United States, and
- Within the University's education programs or activities including locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Sexual Misconduct occurs. This includes any building(s) owned or controlled by a student organization that is officially recognized by the University.

General Requirements

The University will:

- treat Complainants and Respondents equitably by
 - providing remedies to a Complainant where a determination of responsibility for Sexual Misconduct has been made against the Respondent,
 - follow this process to completion before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures, against a Respondent with the exception of interim steps to protect safety and health of the campus community.
- conduct an objective evaluation of all relevant information—including information that could support or refute the alleged responsibility of the Respondent — and provide that credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness
- require that any individual designated by the University as a Title IX Coordinator, Investigator, Hearing Board Chair or Hearing Board member, or any person designated by the University to facilitate an informal resolution process, not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent
- provide training to align with the University's commitment to fostering an atmosphere free from Sexual Misconduct, gender-based harassment, sex-based biases and stereotypes, and other prohibited conduct and creating an environment inclusive of all members of the University community regardless of their sex, sexual orientation, or gender identity
- presume that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made utilizing the process described herein
- allow for the temporary delay of the process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reason(s) for the action
 - Good cause may include considerations such as the absence of a Party, a Party's Advisor, or a witness;
 - Extensions may be granted upon request by either Party. The University may also utilize extensions for good cause

- not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. (ex: information that is part of the Therapist/client relationship)
- if it is determined that the Respondent has committed conduct prohibited herein, impose (an) appropriate sanction(s) which may include, but may not be limited to, those listed in the Student Code of Conduct located at: <https://louisville.edu/dos/students/codeofconduct>

DEFINITIONS:

(Many of these definitions listed in this policy are also listed in the Code of Student Conduct. The process described in the Code of Student Conduct may be utilized in instances where a student allegedly engages in behavior that is prohibited by this policy and the behavior does not meet the jurisdiction criteria for this policy.)

ACTUAL KNOWLEDGE means notice of allegations of Sexual Misconduct to any University Official who has the authority to institute corrective measures on behalf of the University. The Actual Knowledge standard is not met when the only University Official with Actual Knowledge is the Respondent.

ADVISOR is an individual required to accompany the Complainant and Respondent for the purpose of cross-examining the opposing party and any witnesses at the hearing. The Advisor cannot be a party to the complaint.

CHAIR OF THE HEARING BOARD is an individual who will convene and preside over all facets of the hearing.

COMPLAINANT is an individual who is alleged to be the victim of conduct that could constitute Sexual Misconduct.

CONSENT means freely given agreement by a person with capacity to engage in the sexual activity at issue. A person who is incapacitated (as defined below), lacks capacity and cannot give effective Consent. In order for individuals to engage in sexual activity of any type, all involved individuals must Consent to such activity prior to and throughout any sexual encounter. Consent to one sexual act does not constitute Consent to any other such acts; Parties to a sexual encounter must ensure that they have the affirmative Consent of the other individual(s) involved for each sexual act. Affirmative Consent may manifest itself differently depending on the context. "No" always means "no." Words or perceptible actions other than an explicit "yes" may be sufficient to indicate Consent, depending on the totality of the circumstances of each case. Regardless of the circumstances, Consent to any form of sexual activity can be withdrawn at any time, by any Party to a sexual encounter, at any point during the encounter. This is true regardless of what sexual acts (or with whom) the individual(s) in question may have engaged in or agreed to previously, and regardless of the nature of the relationship between the Parties.

DATING VIOLENCE means violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

Whether or not a dating relationship exists is determined (1) by the length of the relationship, (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

This includes threats, assault, property damage, and violence or threat of violence to one's self or to pets of the romantic or intimate partner when used as a method of coercion, control, punishment, intimidation, or revenge.

DAYS means business days as defined by the University academic calendar.

DOMESTIC VIOLENCE is defined as crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

FORMAL COMPLAINT is a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Misconduct against a Respondent and requesting that the recipient investigate the allegation of Sexual Misconduct. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University with which the Formal Complaint is filed.

HEARING BOARD is a panel made up of three members who will decide whether the Respondent is responsible for the alleged Sexual Misconduct. The Hearing Board is comprised of a Chair, and two members chosen from a pool of trained students, faculty, and staff who serve as members of the student conduct hearing council.

HEARING OFFICIAL is an individual who will facilitate the hearing logistics.

INVESTIGATOR is a person or persons designated by the University to conduct and/or oversee the investigation of a Formal Complaint.

INCAPACITATION is a state in which a person cannot make rational decisions as to whether or not to engage in sexual activity because the person lacks the ability to give knowing Consent (i.e., to understand the "who, what, when, where, why, or how" of the sexual interaction). A person may be incapacitated due to mental disability, being asleep, unconsciousness, involuntary physical restraint, from the effects of alcohol or other drugs, or because they are below the minimum age of Consent in the state where the sexual activity occurred. It is important to note that while a person can be incapacitated by intoxication, intoxication (in which case a person is under the influence of alcohol or drugs) does not constitute Incapacitation unless it renders the person unable to Consent as described herein. In every case, the facts are evaluated to assess whether the person in question was capable of providing Consent, and whether a reasonable person in the Parties' positions would perceive the person as being capable or incapable of providing Consent.

PARTY OR PARTIES means Complainant or Respondent and is signified by the singular "Party", and both are signified by the plural "Parties."

RESPONDENT is an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Misconduct.

SEXUAL ASSAULT means any forcible and non-forcible sex offenses from the Federal Bureau of Investigation's classification system, to include rape, sodomy, Sexual Assault with an object, fondling, incest and statutory rape.

- **Rape** is the carnal knowledge of a person, 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 or physical incapacity. For purposes of this policy carnal knowledge is the act of having bodily connections with another; sexual intercourse. As an example, there is "carnal knowledge" if there is the slightest penetration of the vagina by the sex organ of the other person. Attempted Rape is included.
- **Sodomy** is oral or anal sexual intercourse with another person, 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 or physical incapacity.
- **Sexual Assault with an Object** is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, 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 or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia.
- **Fondling** is the touching of the private body parts of another person for the purpose 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 or physical incapacity.
- **Incest** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by the law of the jurisdiction.
- **Statutory Rape** is sexual intercourse with a person who is under the statutory age of Consent as defined by the law of the jurisdiction.

SEXUAL HARASSMENT means conduct on the basis of sex that satisfies one or more of the following:

- An employee of the University conditioning the provision of an aid, benefit or service of the University on an individual's participation in unwelcome sexual conduct (often referred to as quid pro quo);
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
- Sexual Assault, Dating Violence, Domestic Violence or Stalking (otherwise defined herein)

SEXUAL MISCONDUCT is an omnibus term that applies to all misconduct covered by this policy. Sexual Misconduct includes Sexual Harassment (includes quid pro quo and hostile environment); Sexual Assault; Domestic Violence; Dating Violence; and Stalking.

STALKING is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress. Stalking behaviors may include persistent patterns of leaving or sending the person(s) unwanted items or gifts ranging from seemingly romantic to bizarre, following the person(s), or lying in wait for the person(s), harassing the person(s) via the internet or other forms of online and/or electronic communications (i.e., cyberstalking), or interferes with a person's property.

SUPPORTIVE MEASURES means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or the recipient's educational environment, or deter Sexual Misconduct. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the Parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

UNIVERSITY OFFICIAL is either the Title IX Coordinator or Deputy Title IX Coordinators as listed in the Reporting Sexual Misconduct section of this policy.

COMPLAINTS

Reporting Sexual Misconduct

The purpose of making a report is to inform the University that Sexual Misconduct may be occurring or may have occurred, and to provide information sufficient to identify the Parties involved. Any person with knowledge of Sexual Misconduct may report the information to any of the following:

Title IX Coordinators:

Lee Gill, Title IX Coordinator
Grawemeyer Hall, 2nd Floor
Louisville, KY 40208
Phone: (502) 852-9546
Email: titleix@louisville.edu

Dr. Angela B. Taylor, Deputy Title IX Coordinator (for complaints against students)
Associate Vice President for Student Affairs and Assistant Dean of Students

2100 S. Floyd Street
Student Activities Center – W301
Louisville, KY 40208
Phone: (502) 852-5787
Email: angela.taylor@louisville.edu

Donna Ernst, Deputy Title IX Coordinator (for complaints against employees)
Employee Relations Manager

215 Central Station, Suite 205
Louisville, KY 40208
Phone: (502) 852-6538
Email: donna.ernst@louisville.edu

Major Oscar Chavez, Deputy Title IX Coordinator (for complaints against non-University community members), Compliance/External Support
UofL Police Department
2126 S. Floyd Street
Suite 100
Louisville, KY 40292
Phone: (502) 852-7233 or 852-6111
Email: oscar.chavez@louisville.edu

Filing a Formal Complaint

A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by email, by using the contact information provided herein. A Formal Complaint must include the physical or digital signature of either the Complainant or the Title IX Coordinator in order to meet the requirements of a Formal Complaint.

Where the Title IX Coordinator signs the Formal Complaint, the Title IX Coordinator is not the Complainant or otherwise a Party.

Time Period for Filing a Complaint

Prompt reporting of a complaint to a University Official, Title IX Coordinator or Deputy Title IX Coordinators, is strongly encouraged to allow timely response and resolution.

Informal Resolution

The primary objective of the informal resolution process is to resolve the conflict between the Parties and prevent any future Sexual Misconduct from occurring. In all cases, the Deputy Title IX Coordinator or designee will have discretion to determine whether or not informal resolution is appropriate to the circumstances.

Informal resolutions are voluntary and are generally pursued when both Parties, having been fully informed of all available options, have both voluntarily and in writing explicitly requested an informal resolution. The University in its sole discretion will take the Parties' requests to utilize the informal process under advisement and make the final determination as to the use of the informal process. Informal resolution will only be offered after a Formal Complaint has been filed. If the complaint is to be resolved through the Informal Resolution Process, it will be completed in 20 days from receipt of both parties requests to utilize this process. If there is need for a temporary delay or a limited extension of time frames due to extenuating circumstances, the Investigator shall send written notice to the parties of the delay or extension and the reasons for the action.

The Deputy Title IX Coordinator or designee will serve as the facilitator of the informal resolution process. If at any time the Deputy Title IX Coordinator or designee finds the informal resolution process is not beneficial or advancing resolution, the case can be referred back to the Investigator to begin or resume the investigative process. Similarly, either Party can ask to end the process at any time before its completion and proceed to investigative process. If an informal resolution process is ended without resolution, any information obtained or statements made during the informal resolution process may be used in a subsequent formal resolution process and hearing, but may not be used to prove responsibility. Once a complaint has been resolved through an informal resolution process, the matter will be closed.

Formal Resolution Process Begins

A formal resolution process will occur when a Formal Complaint has been filed.

The Complainant may file a Formal Complaint alleging that the Respondent violated this policy at any time. During a Formal Complaint resolution process, the University will conduct a prompt, fair, and impartial investigation. Upon receipt of the complaint, an investigation will be initiated.

Interim and Supportive Measures

The University takes steps to ensure equal access to its education programs and activities and protect the Complainant and Respondent as necessary, including interim and Supportive Measures before the final outcome of an investigation. The University will take these steps promptly once it has notice of a Sexual Misconduct allegation and will provide equitable access to the Parties. The University will also provide the Parties with information on Title IX rights and any available resources, such as victim advocacy, housing assistance, academic support, student financial aid, counseling, visa and immigration services, disability services, health and mental health services, and the right to report a crime to campus or local law enforcement. The University will maintain as confidential any Supportive Measures provided to the Parties, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the Supportive Measures.

While the University must view the Respondent as not responsible for the alleged Sexual Misconduct until a determination regarding responsibility is made at the conclusion of the complaint process, there may be extenuating circumstances where safety concerns require immediate action, such as an interim suspension. Such interim measures can only be taken after an individualized safety and risk analysis determines that there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Misconduct that justifies removal.

PROCESS

After a Formal Complaint is received, there will be a determination as to whether the informal resolution process will be utilized based on requests by the Parties, if any, and a final determination by the Title IX Coordinator or Deputy Title IX Coordinator. If the informal resolution process is utilized, the formal process will not be utilized unless either Party asks to end the informal resolution process before its completion.

There are three separate phases in the Sexual Misconduct formal process (1) the investigation phase, (2) the hearing phase (as needed), and (3) the appeal phase (as needed). The entire process (all three

phases) will be completed within 120 Days from the date of the Formal Complaint. The University may extend this time frame for good cause with approval of the Title IX Coordinator or Deputy Title IX Coordinator and with notification to both Parties and their Advisors in writing.

The University will maintain as confidential Sexual Misconduct complaints and the parties involved to the extent maintaining confidentiality would not impair the University's ability to adequately evaluate, respond to, and investigate the allegations raised in the complaints. The University will also protect the privacy of student education records and employee records in accordance with the University's policies on Family Educational Rights and Privacy Act (FERPA) and Personnel Records.

Receipt of Complaint

Upon receipt of a Formal Complaint, the University will provide written notice to the Parties who are known to include:

- Notice of the University's process, including any informal resolution process.
- Notice of the allegations of Sexual Misconduct as defined in this document including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
- Sufficient details include the identities of the Parties involved in the incident, if known, the conduct allegedly constituting Sexual Misconduct and the date and location of the alleged incident, if known.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the process.
- Advisement to the parties that they may have an Advisor of their choice attend the hearing for the purpose of cross-examining the opposing party and opposing party's witnesses at the hearing. The Advisor cannot be a party to the complaint.
- Advisement to the parties that if a party does not choose to bring their own Advisor, and if timely requested, the University will provide the party an Advisor for the limited purpose of conducting cross-examination at the hearing.
- Advisement to the parties that they may consult with anyone of their choosing to prepare for the hearing and may have one person accompany them to any portion of the investigative process that the party participates in.
- Any provision in the University's Code of Student Conduct that prohibits knowingly making false statements or knowingly submitting false information during the investigation, charging/hearing, or appeal phases of the process.
- Notice that if, in the course of an investigation, additional allegations relating to violations of Title IX about the Complainant or Respondent are discovered, Parties whose identities are known will be notified.

Consolidation of Formal Complaints.

The University may consolidate Formal Complaints as to allegations of Sexual Misconduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Sexual Misconduct arise out of the same facts or circumstances. Where a process involves more than one Complainant or more than one Respondent, references to the singular “Party,” “Complainant,” or “Respondent” include the plural, as applicable.

Dismissal of Complaints

The Deputy Title IX Coordinator must evaluate each Formal Complaint that is filed to determine whether it meets the jurisdictional requirements to proceed through the formal Title IX investigative process.

Must Dismiss:

The University is required to dismiss the Formal Complaint for purposes of this policy if at any point the institution determines that the conduct alleged in the complaint

- Would not constitute Sexual Misconduct as defined in this policy, even if proved
- Did not occur in the University’s education program or activity; or
- Did not occur against a person in the United States (a person can be anyone including non-citizens)

The University reserves the right to address the alleged conduct in a dismissed complaint utilizing the Code of Student Conduct or other policies, as applicable.

May Dismiss:

The University may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing:

- a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- the Respondent is no longer enrolled or employed by the University;
- or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Appeal of Dismissal:

When a complaint is dismissed the University will send written notice of the dismissal and reason(s) for the dismissal simultaneously to the Parties. Both Parties can appeal the decision to dismiss or the decision to dismiss any allegation in a Formal Complaint on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding dismissal was made and that could affect the outcome of the matter; and

- The Title IX Coordinator, Investigator, or Hearing Board member had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

The appeal should be in hard copy or electronic format and should contain clear and concise information to support each basis of appeal. The appeal should be delivered to Vice President for Risk, Audit, and Compliance or their designee who will serve as a neutral party free from bias or conflict of interest. The Vice President for Risk, Audit, and Compliance or designee will review the appeal in an impartial manner and issue a written response within ten (10) Days after receiving written notice of the dismissal.

The appeal must specify the grounds for appeal and a written explanation in support of the appeal.

Upon receipt of an appeal, the appeal officer must

- Notify the other Party in writing that an appeal was filed
- Notify the other Party that an appeal has been submitted and the individual has the opportunity within five (5) Days to submit a written response

Final decision of the appeal officer

The written decision of the appeal officer must describe the result and the rationale of the appeal

- Outcomes from the appeal officer may:
 - uphold the dismissal;
 - overturn the dismissal;
 - request collection of more evidence before making a decision.

After consideration of the appeal, the appeal officer must:

- uphold the dismissal;
- overturn the dismissal;
- request collection of more evidence before making a decision.

The appeal officer will issue a written decision that must describe the result and the rationale for the result. The written determination must be issued to the parties simultaneously. The decision of the appeal officer is final.

Investigation

The Formal Complaint resolution begins with an investigation. This information gathering process will be completed in a reasonably prompt manner. The Dean of Students Office may extend the amount of time needed to conduct the investigation, as deemed necessary, upon notice to both Parties in writing.

The University cannot access, consider, disclose, or otherwise use a Complainant's or Respondent's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting

in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the university obtains that Party's voluntary, written consent to do so.

The investigative process is an internal University process; therefore, it is not open to persons, including counsel from outside of the University community. However, the Complainant and Respondent may bring their Advisor, or an outside person of their choice to their meetings with the Investigator. Advisors and outside persons can only attend investigative meetings if their respective party is present. Advisors and non-parties have no role in the investigative process except to confer, support, and give advice to their Party in a quiet, confidential, and non-disruptive manner.

The University will:

- provide an equal opportunity for the Parties to present witnesses, including fact and expert witnesses, and other information that could support the allegations or refute the responsibility of the Respondent. Witness testimony and information regarding behavior not relevant to the incident in question, will be excluded from consideration in a hearing.
- Not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant information
- Provide to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of investigative interviews, or other meetings, with sufficient time (not less than three (3) Days) for the Party to prepare to participate
- Prior to completion of the investigative report, send to each Party and the Party's Advisor, if any, a preliminary investigative report with the evidence subject to inspection and review in an electronic format or a hard copy, and provide the Parties ten (10) Days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- Create a final investigative report that fairly summarizes relevant information and send to each Party and the Party's Advisor.
- State that any evidence that the parties intend to rely on at the hearing must be provided to the Investigator for consideration or it cannot be used at the hearing.
- The report will contain:
 - Factual information only
 - No findings regarding violations
 - A statement that the matter:
 - Has met the jurisdictional elements and will proceed to hearing or
 - That the complaint will be dismissed and the reason for such dismissal
 - The Deputy Title IX Coordinator should consult with the Title IX Coordinator if there are any concerns as to jurisdiction

- The Deputy Title IX Coordinator shall consult with the Title IX Coordinator if there is consideration of a dismissal
- Provide notification of a hearing date that must be at least ten (10) Days from the date the final investigative report is issued but absent extenuating circumstances no more than 30 Days out
- Parties have five (5) Days from the issuance of the final investigative report to request an alternative hearing date due to an unavoidable scheduling conflict.

Investigations should include:

1. A request for a meeting with the Complainant
 - Written notice of the date, time, location and purpose of the interview must be sent to Complainant with sufficient time for Party to prepare to participate.
 - Request Complainant to provide a written statement at least three (3) Days prior to the meeting
2. Request a meeting with Respondent
 - Written notice of the date, time, location and purpose of the interview must be sent to Respondent with sufficient time for Party to prepare to participate.
 - Request Respondent to provide a written statement at least three (3) Days prior to the meeting
3. Identify other witnesses who may have relevant information and request a meeting
 - Request witnesses to provide a written statement at least three (3) Days prior to the meeting
 - The University must provide equal opportunity for the Parties to present fact and expert witnesses and other information that could implicate or absolve the Respondent

Final Report

After considering all of the evidence and any responses from the parties, the Investigator shall issue a final report. The report should fairly summarize the relevant information and evidence collected but will not make factual findings or a determination regarding whether the policy is violated. The final report shall be forwarded to the Title IX Coordinator who will review the report and confirm that the alleged conduct may constitute Sexual Misconduct as defined in the policy. If the alleged conduct, if true, would not constitute Sexual Misconduct as defined in the policy, the complaint must be dismissed. If the complaint is dismissed, a notice of dismissal will be sent to both parties and include information regarding the right to appeal. If the alleged conduct may constitute Sexual Misconduct, it will proceed to a hearing. If the matter will proceed to a hearing, a hearing notice that includes the charges to be addressed at a hearing and the date of the hearing shall be attached to the final report. The final report and hearing notice shall be issued at least 10 business days prior to the hearing, and absent extenuating circumstances, the hearing will be no more than 30 days from the issuance of the final report.

Hearing

The Hearing Board will be composed of a Chair of the Hearing Board (who may be external to the University), and two additional members chosen from a pool of trained students, faculty, and staff who serve as members of the student conduct hearing council. The Hearing Board will hear information and deliberate to make determinations regarding a finding of responsibility (if any) and sanction(s) (if any) to be imposed. These decisions will be based on relevant information provided by the Complainant, Respondent, and witness(s) during the hearing. Board decisions will be based on a majority vote with no abstentions allowed.

The University will:

- Provide a live hearing.
- Allow each Party to have an Advisor
- Permit each Party's Advisor to, cross-examine the other Party and any witnesses with relevant questions and follow-up questions, including those challenging credibility.
 - Cross-examination at the live hearing will be conducted directly, orally, and in real time by the Party's Advisor and never by a Party personally
 - Only relevant questions may be asked of a Party or witness. Before a Complainant, Respondent, or witness answers a question, the Chair of the Hearing Board will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
 - Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.
 - Since formal rules of evidence do not apply in university sexual misconduct hearings, the Chair of the Hearing Board has the discretion to assign such weight to statements and other information that satisfies the relevance rules but is not subjected to cross-examination as the Chair of the Hearing Board deems appropriate. The Chair of the Hearing Board will make these determinations and provide this information during deliberations to the Hearing Board.
 - The Hearing Board cannot draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- Any evidence that the parties intend to rely on at the hearing must be provided to the Investigator for consideration or it cannot be used at the hearing.
- The presence of an additional support person may be requested pursuant to disability laws or may be deemed necessary by the University for language assistance. Any requests for

accommodation or for language assistance at the hearing must be made to the University at least five Days in advance of the hearing.

- At the request of either Party, or at the discretion of the University, provide for the live hearing to occur with the Parties located in separate rooms with technology enabling the Hearing Board, Parties, and all other participants to simultaneously see and hear the Party or the witness answering questions.
- Live hearings may be conducted with all Parties physically present in the same geographic location or, at the University's discretion, any or all Parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- The University will create an audio or audiovisual recording of any live hearing and make it available to the Parties for inspection and review. Any record of the hearing will remain the property of the University. No other recording(s) of the hearing will be permitted.

Hearing Board Procedures

A hearing will be comprised of a Hearing Official, a Hearing Board (Chair and two members), a Complainant (if they choose to attend), a Respondent (if they choose to attend) and an Advisor for each Party.

The Hearing Official will:

- Notify Parties and witnesses as to the date, time and location of the hearing to ensure that the Parties and relevant witnesses have the opportunity to participate in the hearing
- Handle all details for the hearing such as reserving space, ensuring availability of equipment needed, and coordinating witness movement
- Answer questions and provide clarity to the Parties and to the Hearing Board regarding process

The Chair of the Hearing Board will:

- Serve as the Chair of a three-person Hearing Board comprised of the Chair, and two members chosen from a pool of trained students, faculty, and staff who serve as members of the student conduct hearing council.
- Rule on the admissibility of evidence ensuring the consideration of information that could support or refute the allegations against the Respondent.
- Conduct the questioning portion of the hearing including conducting any questioning they may deem necessary of the Complainant, the Respondent or witnesses and oversee the cross examination by Advisors of the opposing Party
- Control the tone and tenor of the hearing, particularly in the presence of experienced counsel on one side or the other or both

- Have discretion to call witnesses other than those presented by the parties and may question any party or witness directly, irrespective of questions that may be posed by the Advisors.
- Remove from the hearing any Advisor or other attendee at the hearing who refuses to comply with the University's rules of decorum or acts disrespectfully or abusively during a hearing.
- Make relevancy determinations regarding all questions prior to a response to the question and providing an explanation for excluding any question to the Parties and their Advisors. Absent an affirmative ruling that a question is not relevant, the Chair will be deemed to have determined that a question is relevant.
- Ensure that the Hearing Board not rely on any statement provided by a Party or witness who does not submit to cross- examination at the live hearing in reaching a determination regarding responsibility
- Ensure that the Hearing Board does not draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the live hearing or refusal to answer cross- examination or other questions.
- Deliberate with the Hearing Board and by majority vote (no abstentions are allowed), make the determination of responsible or not responsible utilizing the preponderance of evidence standard,
- In the case of a finding of responsible, reconvene to deliberate with the Hearing Board to determine sanctions by majority vote (no abstentions are allowed).
- Provide to the Dean of Students a letter within ten (10) Days containing the decision as to responsibility and sanctions. Both parties will need to be notified simultaneously of the decision.

The Hearing Board will:

- Attend and listen to all portions of the hearing and engage in questioning as deemed appropriate by the chair
- Deliberate in closed session, after dismissing the Parties and their Advisors, utilizing the preponderance of evidence standard, to determine the finding of responsible or not responsible by a majority vote (no abstentions allowed)
- After a determination of responsible, reconvene and determine sanctions by a majority vote (no abstentions allowed).

The Advisor will:

- Confer and give advice to their respective Party in a quiet, confidential, and non-disruptive manner
- Be permitted to cross-examine the other Party and witnesses by asking all relevant questions and follow-up questions, including those challenging credibility. Questions challenging the credibility of a Party or a witness can touch on topics such as honesty, inconsistency, or that the individual has given a contrary statement at another time.

- At all other times during the hearing or any other part of the process at which the Advisor is present, the Advisor will have no other role except to advise their Party.
- Any Advisor who refuses to comply with the University's rules of decorum or acts disrespectfully or abusively during a hearing may be removed from the hearing at the discretion of the Chair of the Hearing Board. In that event, the Party may substitute a different Advisor (if immediately available) or the hearing will be continued until a replacement advisor is secured.
- If a Party does not choose to bring their own Advisor to the hearing and provides appropriate notice to the University, the University will provide the Party with an Advisor for the purpose of cross-examining witnesses only.

The hearing will be informal. State and federal rules of evidence and civil procedure will not apply in the hearing. The hearing will be closed to everyone except the Hearing Official, the Hearing Board, appropriate Dean of Students Office and/or University staff, Respondent, Complainant, Advisor to the Respondent, Advisor to the Complainant, and witnesses during the actual time of their participation.

The Respondent and the Complainant have the opportunity to:

- Be present at the hearing. However, if the Respondent and/or Complainant fail to appear for the hearing, the hearing may be held in their absence(s).
- Explain or ask questions about all information provided as part of the investigation including statements provided to the investigators and the response (if any) to the investigative report. Typically, no new witness statements or other new information will be introduced at the hearing except for information elicited from the cross-examination of witnesses.
 - It is the responsibility of the Respondent and the Complainant to notify their witness(es) of the date, time, and location of the hearing. If witnesses fail to appear, the hearing will be held in their absence(s). Witness testimony or information regarding behavior not relevant to the incident in question, will be excluded from consideration at the hearing.
- Bring one Advisor to the hearing.
- Request a pre-hearing meeting prior to the hearing.
- To not speak or answer any question during the hearing. If a Party or witness does not submit to cross-examination at the hearing, the Hearing Board must not rely on any statement of that Party or witness in reaching a determination regarding responsibility. The Hearing Board cannot draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

All procedural questions are subject to the final decision of the Chair of the Hearing Board.

Hearing Decision

The Chair of the Hearing Board, who cannot be the same person as the Title IX Coordinator or the Investigator, will issue a written finding regarding responsibility. The Chair of the Hearing Board will

draft and issue the Board's decision within ten (10) Days of the hearing. To reach a finding of responsibility, the Hearing Board must utilize the preponderance of evidence standard.

The written determination must include—

- Identification of the allegations potentially constituting Sexual Misconduct
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of this policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant; and
- The University's procedures and permissible bases for the Complainant and Respondent to appeal.

The University will receive the Hearing Board's decision and subsequently provide the written determination to the Parties simultaneously. The determination regarding responsibility becomes final either on the date that the University provides the Parties with the written determination of the result of the appeal, if an appeal is filed; or the date on which an appeal would no longer be considered timely.

APPEALS

The University will allow both Parties to appeal the outcome (responsible or not responsible) and any sanctions. To initiate an appeal of a conduct hearing decision the individual must complete the [Student Appeal Form](#). The appeal is a review of the case file relative to the basis or bases of appeal and is not intended to provide a second hearing of the case. This appeal will be conducted in an impartial manner by an impartial decision-maker.

The Respondent or Complainant may request an appeal for one or all of the following reasons:

- whether there was a procedural irregularity that affected the outcome of the hearing
- whether there was sufficient information presented at the hearing to establish, by a preponderance of the information, that a violation of the prohibited conduct section occurred;
- whether the sanction(s) imposed was appropriate
- whether there is new information that was not known to the person requesting the review at the time of the hearing and that, if presented at the hearing, would more likely than not have altered the hearing decision.

- whether the Title IX Coordinator, investigator(s), or Hearing Board had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter

The Dean of Students or designee will first review all requests for appeal to determine if the request invokes one or more of the permissible bases for appeal and are within the appeal filing timeline. If a party does not meet the established criteria for appeal or the appeal is not submitted within the allotted timeframe, the Hearing Board decision will be the final decision of the University.

Appeals must be completed by submitting the online [Student Appeal Form](#) to the Dean of Students or designee within ten (10) Days after the issuance of the hearing decision. After Parties are informed of the case outcome and if an appeal is submitted by the Complainant or Respondent, the other Party shall be given a copy of the appeal and an opportunity to respond within five (5) Days of notification that an appeal has been submitted. If the Party who provided the opportunity to respond does not respond within (5) days, their opportunity to respond is forfeited.

When the ten (10) Day deadline for appeal has expired and no appeal is submitted, the Hearing Board decision is final.

Appeals Decision

The Dean of Students or designee has the authority to:

- Uphold the decision of the Hearing Board, including the sanction(s) imposed.
- Alter the sanction imposed by the Hearing Board by reducing or increasing the severity of the sanction(s).
- Remand the case to the Hearing Board for further consideration, or for a new hearing.
- Reverse the decision of the Hearing Board.

The decision of the Dean of Students or designee will be transmitted in writing to the appealing student within fourteen (14) Days after the deadline for appeals is expired. As required by Title IX regulations, both Parties will be notified of the appeal decision. The decision of the Dean of Students or designee on all conduct hearing appeals is the final decision of the University.

Expulsion Review

A student who has been expelled from the University may apply for special consideration for readmission after a period of not less than five (5) years. The former student must submit a written petition for readmission to the Office of the Dean of Students. This written request must outline a strong justification for readmission. Additional pertinent documentation may also be required. The Dean of Students or designee will review relevant information and make a final decision. Factors to be considered in review of such a petition will include, but may not be limited to:

- The present demeanor of the petitioner,
- the conduct subsequent to the expulsion (documentation may be required), and/or

- the nature of the violation causing the expulsion and the severity of damage, injury, and/or harm that occurred.

INDEPENDENT ACTION

Language in this policy notwithstanding, the University reserves the right to investigate activities or behaviors that potentially violate other University's policies, procedures, and standards, irrespective of whether an investigation moves forward under this policy.

STANDARD OF PROOF

The standard of proof for incidents of non-academic misconduct is a preponderance of evidence. Preponderance of evidence means that the evidence supports that a given allegation is more likely to be true than not true. The technical rules of evidence applicable to civil and criminal cases shall not apply when resolving incidents as outlined in this policy.

RETALIATION

The University prohibits retaliation. Retaliation is any act taken against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

TITLE IX MANDATORY REPORTING:

All university employees are considered mandatory reporters unless they are specifically designated as a confidential resource and as such, are expected to provide information regarding possible violations of this policy as soon as reasonably possible.

Mandatory reporters include but are not limited to: President, Vice Presidents, Deans, Department Chairs, Directors, and Coaches

Assistant or Associate Vice Presidents, Deans, and Provost, Vice Provosts, Associate and Assistant Provosts

Any employee in a supervisory or management role

All Faculty

University of Louisville Police Officers and any contracted security personnel

FEDERAL AND STATE OFFICES

Some forms of harassment and discrimination may violate federal and state laws, and a Complainant or Respondent may choose to contact the following agencies regarding their complaint:

Philadelphia Office for Civil Rights

U.S. Department of Education

The Wanamaker Building

100 Penn Square East, Suite 515

Philadelphia, PA 19107-3323

Phone: (215) 656-8541

TDD: 1-877-521-2172

Email: OCR.Philadelphia@ed.gov

Kentucky Commission on Human Rights

332 W. Broadway, 7th Floor

Louisville, KY 40202

Phone: (502) 595-4024 or 1-800-292-5566

Email: kchr.mail@ky.gov

Federal Equal Employment Opportunity Commission

600 Dr. Martin Luther King, Jr. Place

Suite 268

Louisville, Kentucky 40202

Phone: 1-800-669-4000

TTY: 1-800-669-6820

Website: www.eeoc.gov

CONFIDENTIALITY, PRIVACY, AND REPORTING

Students should be aware of confidentiality, privacy, and mandatory reporting requirements in order to make informed choices.

If a person desires that details of the incident be kept confidential, the resources listed below are appropriate. In addition, members of the clergy and chaplains are allowed by law to keep reports confidential. Seeking support from any of these resource organizations is not considered an official report of any type of Sexual Misconduct to the University. The individuals at these resource organizations listed below facilitate a report and advocate for individuals who request assistance.

A person may seek advice from certain individuals who are not required to report to anyone else private, personally identifiable information unless there is cause or fear for the reporting person's safety or the safety of others. Confidential resources are individuals whom the University has not specifically designated as "responsible employees" for purposes of putting the Institution on notice and for whom mandatory reporting is not required, other than in the stated limited circumstances, such as statistical reporting for the Clergy Act.

PEACC (Prevention, Education and Advocacy on Campus and in the Community)

PEACC is available to provide advocacy and confidential assistance to University students, staff, and faculty who are affected by Sexual Misconduct, sexual violence, intimate partner violence, and Stalking. An advocate can listen, discuss options, and assist the person in accessing medical care, housing accommodations, academic concerns, referrals to community and campus resources, and/or reporting options.

PEACC Center

2100 S. Floyd Street

Student Activities Center. W309-H

Louisville, KY 40292

Phone: (502) 852-2663

website: louisville.edu/peacc

University Counseling Services
Cardinal Station Center
2100 South Floyd Street, W204
Louisville, KY 40208
Phone: (502) 852-6585
Website: louisville.edu/counseling

Health Sciences Campus
500 South Preston Street
A Building--Rooms 219 and 220
Louisville, KY 40292
Phone: (502) 852-0996 Website: louisville.edu/medicine/studentaffairs/student-services/hsc-counseling-services

Campus Health Services Clinic
Cardinal Station Center
215 Central Avenue - Suite 110
Louisville, KY 40208
Phone: (502) 852-6479
Website: louisville.edu/campushealth

Health Sciences Center
University of Louisville Outpatient Care Center
401 East Chestnut Street, Suite 110
Louisville, KY 40202
Phone: (502) 852-6446

In the Community:

Center for Women and Families Crisis Line:
927 South 2nd Street
Louisville, Kentucky 40201
Phone: (877) 803-7577

Sexual Assault Nurse Examiner (SANE)
In Jefferson County, most examinations that include the collection of evidence (Sexual Assault, Sexual Misconduct, intimate partner abuse) are performed by the Louisville SANE Program at one of their two locations:
Phone: (502) 562-4064

University of Louisville Hospital Emergency Room
530 South Jackson Street
Louisville, KY 40202
Phone: (502) 562-4064
Center for Women and Families SAFE Services
927 South 2nd Street

Louisville, KY 40201
Phone: 1-844-BE-SAFE-1

All emergency rooms in the Commonwealth of Kentucky are authorized and required to provide this service. These services can be provided by a physician, Sexual Assault nurse examiner, and/or another qualified medical professional. Physical evidence of a criminal Sexual Assault must be collected from the alleged victim's person as soon as possible. Having evidence collected will help to keep all options available to a victim, but will not obligate the victim to any course of action. The evidence collected may assist the authorities should the victim decide later to pursue criminal charges.

FEDERAL STATISTICAL REPORTING OBLIGATIONS

Certain campus officials have a duty to report Sexual Misconduct for federal statistical reporting purposes such as the Clery Act. All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus; in the surrounding area, but no addresses are given) for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety.

FEDERAL TIMELY WARNING REPORTING OBLIGATIONS

Parties should also be aware that University administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The University will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the above paragraph.

KENTUCKY LAW REQUIRING MANDATORY REPORTING

Kentucky law requires that any person who suspects that a minor child (under 18) is the victim of abuse or neglect must immediately contact a local law enforcement agency or other agency authorized by statute KRS 620.030. The University Police Department (502-852-6111) constitutes a local law enforcement agency for purposes of Kentucky's mandatory reporting law for child abuse and neglect. Failure to report suspected abuse may result in criminal charges and/or disciplinary action.

Kentucky law also requires that any professional who has reasonable cause to believe that a victim with whom he or she has had a professional interaction has experienced Domestic Violence and abuse or Dating Violence and abuse, the professional shall provide the victim with educational materials related to Domestic Violence and abuse or Dating Violence and abuse including information about how he or she may access regional Domestic Violence programs or rape crisis centers and information about how to access protective orders per KRS 209A.100. The University Police Department can be reached at 502-852-6111.

POLICY REVIEW

This policy will be reviewed on an annual basis and refined and edited as needed.

