



Office of Institutional Equity

APPEALS OFFICER TRAINING

Policy on Discrimination and Harassment, 1.4.1

Who is an Appeals Officer?

Pursuant to 1.4.1, there are two separate bodies that can hear an appeal stemming an investigation or hearing under the Policy on Discrimination and Harassment (“PDH”).

- Equity Complaint Appeals Council
- Board of Regents

Equity Complaint Appeals Council (“ECAC”)

The ECAC hears appeals involving student Respondents seeking an appeal unrelated to a sanction of suspension or expulsion, staff, and non-tenured faculty Respondents. The Council also hears appeals involving tenured faculty Respondents that do not involve termination. The members shall be the Senior Vice- President for Academic Affairs and Provost, the Vice-President for Finance and Administration, and the Dean of Students, or their designees when necessary. The members of the ECAC and the Board of Regents shall not include the Title IX Coordinator, the Investigator(s), or any member of the ECC Hearing Panel. The members of the ECAC and the Board of Regents shall receive training in accordance with the requirements of the final Title IX regulations, and shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

Board of Regents

The Board of Regents hears appeals involving sanctions of suspension or expulsion, for a student Respondent, except that a tenured faculty member has a right to appeal the discipline of termination to the Board of Regents pursuant KRS164.360.

Who can submit an appeal?

The Respondent and the Complainant may appeal the University's closure or dismissal of a Complaint or allegations therein, as well as the Title IX Hearing Officer or ECC Hearing Panel's written determination of responsibility and/or sanctions or discipline. The University will implement the appeal procedures equally for both parties and will use the Preponderance of the Evidence Standard for its determination.

Either party may appeal the ECC or Title IX Hearing Officer Determination of Responsibility and/or the sanctions or discipline imposed by the ECC or Hearing Officer. However, pursuant to KRS 164.360, in instances in which the Respondent is a tenured faculty member, the Complainant may appeal sanctions or discipline based on the claim that termination should have been imposed only in cases of Sexual Misconduct or Sexual Harassment.

The ECAC and Board of Regents hear all matters on appeal from the Office of Institutional Equity.

The Office of Institutional Equity reviews matters of the following types:

Harassment and/or Discrimination on the basis of one's membership or perceived membership in a protected class:

- Race;
- Color;
- Religious belief;
- National origin;
- Sex;
 - Title IX and Non-Title IX
- Sexual orientation;
- Gender identity
- Gender expression
- Pregnancy
- Ethnicity;
- Disability;
- Medical condition;
- Veteran status;
- Genetic information;
- Age; or
- Any other characteristic protected by federal, state or local law in its programs and activities.

Title IX Sexual Harassment

Conduct on the basis of sex that is:

- Taken against a person in the United States;
- Occurs in a University education program or activity;
- Reported by or on behalf of a Complainant who, at the time of the report filing, was participating in or attempting to participate in a University education program or activity; and
- Meets the definition of one of the following categories:
 - ***Quid Pro Quo Harassment*** - An employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
 - ***Hostile Environment*** - 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**, as defined by this Policy."

Non-Title IX Sexual Harassment

Any unwelcome sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature, whether verbal, physical, graphic, or otherwise. Harassment can be divided into two types of conduct:

- ***Quid Pro Quo Harassment*** – Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, academic standing, or participation in any aspect of the University's program or activity or is used as the basis for the University's decisions affecting the individual.
- ***Hostile Environment*** – Exists when the conduct is sufficiently severe, pervasive, **or** persistent that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's education or employment programs and/or activities.

Grounds for an appeal:

1. **Procedural Error:** A procedural error occurred that affected the outcome of the investigation, including the findings and/or sanctions or discipline. A description of the error and its impact on the outcome of the case must be included in the written appeal.
2. **New Evidence:** New evidence that was not reasonably available at the time that the determination of responsibility was made and that could affect the outcome of the case, including the findings and/or sanctions. Information that was known to the Complainant or Respondent during the investigation, but which they chose not to present, is not new evidence. A summary of this new evidence and its potential impact on the investigation findings and/or sanctions must be included in the written appeal.
3. **Conflict of Interest or Bias:** The Title IX Coordinator, Investigator(s), any member of the ECC Panel, or the Title IX Hearing Officer 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.
4. **Inadequate Justification:** There is inadequate justification for the sanctions or discipline.

- The role of the ECAC or Board of Regents regarding appeals is limited.
- Appeals are not intended to be a full rehearing of the Complaint.
- The parties will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome of the investigation.

Impartiality

Members of the ECAC and the Board of Regents shall be neutral and impartial in reviewing the information and in the appeals decision-making process.

Conflict of Interest

Members of the ECAC and the Board of Regents shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

As part of an appeal, the ECAC or Board of Regents will receive the following information:

- **Investigative record (Investigation Reports with all exhibits);**
- **Hearing record (for matters that went to hearing);**
- **Decision/Order as written by the ECC or Title IX Hearing Officer;**
- **The statement of appeal; and**
- **Any/all statements provided by the parties as their response to an appeal.**

Appeals are confined to a review of the statements submitted by the parties and the investigative and hearing record for the grounds stated above, including but not limited to evidence presented at the hearing and documentation pertinent to the grounds for appeal. The ECAC and/or the Board of Regents shall not consider matters outside of the statements provide by the parties and the investigative and hearing record in making a determination.

Evidence Standard:

Preponderance of the Evidence

Evidence is such that it would persuade a reasonable person that a proposition is more probably true than not true. A finding that is “more likely than not” to be true would satisfy this standard.

ECAC members and/or the Board of Regents shall not initiate, permit, or consider communications made to them outside the proceedings concerning a pending or impending appeal, except as follows:

- 1. Communications necessary to perform their responsibilities and duties; and/or**
- 2. Communication for scheduling, administrative, or emergency purposes, which does not address substantive matters.**

If an ECAC member or a Regent receives an unauthorized communication bearing upon the substance of a Complaint, the member or Regent shall promptly notify the Complainant, Respondent, University representative, and OIE of the substance of the communication and provide the parties with an opportunity to respond.

If the ECAC or Board of Regents determines that a submitted appeal does not meet the standards for an appeal, the ECAC or Board of Regents will deny the appeal.

If the ECAC or Board of Regents determines that a submitted appeal meets one of the appeal bases, the ECAC or Board of Regents will take appropriate action as indicated below:

- **Procedural Error:** If it is determined that a procedural error occurred that affected the outcome of the investigation, including the findings and/or sanctions or discipline, the ECAC or Board of Regents will return the matter to OIE with instructions to correct the error, and to reconsider the findings as appropriate. In rare cases, where the procedural error cannot be corrected by OIE (as in cases of bias), the ECAC or Board of Regents may order a new investigation with a new investigator.
- **New Evidence:** If the ECAC or Board of Regents determines that new evidence should be considered that could affect the outcome of the investigation, including the findings and/or sanctions or discipline, the matter will be returned to the OIE to reconsider the Complaint in light of the new information only, and to reconsider the original findings as appropriate. OIE will prepare an Addendum to the Final Report, and provide the Parties with an opportunity to respond to the Addendum within ten (10) Business Days. If the ECAC or the Board of Regents determines that new evidence should be considered that could impact the sanctions or discipline, the ECAC or the Board of Regents may issue a new sanction or discipline.

If the ECAC or Board of Regents determines that a submitted appeal meets one of the appeal bases, the ECAC or Board of Regents will take appropriate action as indicated below: (cont.)

- **Conflict of Interest or Bias:** If the ECAC or the Board of Regents determines that the Title IX Coordinator, Investigator(s), a member of the ECC Panel, or Title IX Hearing Officer had a conflict of interest or bias as described above that affected the outcome of the matter, the ECAC or the Board of Regents may order a new investigation and/or hearing with different University personnel.
- **Inadequate Justification:** If the ECAC or the Board of Regents determines that there is inadequate justification for the sanctions or discipline, the ECAC or the Board of Regents may issue new sanctions or discipline.

- The ECAC or Board of Regents will simultaneously notify both parties in writing of the outcome, including the result of the appeal and the rationale for the result.
- The decision of the ECAC or the Board of Regents shall be final.
 - The decision of the ECAC or Board of Regents shall include this statement.

Appeals for Tenured Faculty Respondent Subject to Termination Only:

- A Respondent who is a tenured faculty member has a right to appeal the discipline of termination to the Board of Regents, pursuant to KRS 164.360. Complainants may appeal based on the claim that termination should have been the discipline imposed only in cases of Sexual Misconduct or Sexual Harassment.
- The following principles apply regarding the termination of tenured faculty members:
 - The Board of Regents will hear the discipline appeal as soon as is practicable, but no later than the next regularly scheduled Board meeting. The decision of the Board of Regents is final and may not be appealed.

Appeals for Tenured Faculty Respondent Subject to Termination Only: (cont.)

- Appeals based on new evidence will be remanded to the OIE Investigator who will then review the factual findings to determine if the new information changes the factual finding. If the Investigator determines that the factual finding has changed, the new factual finding will be sent to the appropriate hearing panel for sanctioning.
- A faculty member shall not be removed until after ten (10) days' notice in writing, stating the nature of the charges preferred, and after an opportunity has been given to him or her to make a defense before the Board of Regents by counsel or otherwise and to introduce testimony which shall be heard and determined by the Board of Regents (KRS 164.360). In cases involving Sexual Misconduct or Sexual Harassment only, the Complainant shall have the same rights as the tenured faculty Respondent.

Appeals for Tenured Faculty Respondent Subject to Termination Only: (cont.)

- All parties will be notified, simultaneously, of whether the disciplinary action appeal is accepted and the results of the disciplinary action appeal decision.

Questions?

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References

- Policy on Discrimination and Harassment, 1.4.1
https://policies.eku.edu/sites/policies.eku.edu/files/policies/1.4.1_discrimination_and_harassment_final.pdf