



Policy Name: Relationship Conduct Policy

Department: Administration and Finance

This policy applies to: Campus Wide

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POLICY SECTIONS

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STATEMENT ON NON-DISCRIMINATION

King University does not discriminate on the basis of race, color, national origin, sex, or disability, or age in its programs and activities.

PURPOSE AND OVERVIEW

The purpose of this Relationship Conduct Policy is to provide a single reference document for students, faculty, staff, and others affected by conduct prohibited by this policy to find information regarding King University's rules, policies, and procedures. Pursuant to its obligations under Title IX, King University adopts and publishes the grievance procedures contained herein to provide prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by non-discrimination laws. Conduct defined as Prohibited Sexual Harassment will follow a process that complies with 34 CFR § 106.45 for formal complaints.

King University expects that all members of its campus communities to conduct themselves in a responsible manner that shows respect for others and for the community at large. Students, faculty, staff, and all other employees are subject to King University policies (including this Relationship Conduct policy) and to various local, state, and federal laws that regulate civil conduct. King University's proceedings are separate from civil litigation or criminal arrest and prosecution, and may be carried out prior to, simultaneously with, or after civil or criminal proceedings.

King University intends to provide a safe and welcoming campus environment. In accomplishing this, King University seeks to provide safety, privacy to the fullest extent possible, and support to complainants, respondents, witnesses and others impacted by violations of this policy. King University will offer educational programs to promote the awareness and prevention of assault, violence, harassment, and any other type of relationship misconduct. Reports of misconduct will be taken seriously, and incidents will be responded to appropriately and in a timely manner.

King University is bound by federal and state laws, including but not limited to Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex, and Title VI and Title VII of the Civil Rights Act of 1964, which prohibit discrimination on the basis of multiple categories such as race, color, national origin, , sex, and religion. Sexual harassment, including acts of sexual violence, is a form of sex discrimination. King University is committed to complying with all such laws and providing a safe campus environment for all.

This Relationship Conduct Policy is applicable to University programs and activities on campus and off campus, and affects all relationships within the King University community, including conduct by or affecting students, faculty, and staff. Conduct toward persons outside the King University community may be considered a violation of this policy if King University concludes there is a sufficient connection between the conduct and King University to warrant the University taking action.

Definitions of key terms referenced throughout this document are provided as an appendix.

UNIVERSITY CONTACTS FOR REPORTING

Students and employees may report any behavior believed to be a violation of the Relationship Conduct Policy to the following:

Holly Aceves
Title IX Coordinator
Director of Employee Relations
1350 King College Road, Bristol, TN 37620
E.W. King Building Room 16F
hlaceves@king.edu
423-652-4785

Additionally, a report can be filed at any time by contacting the Office of Safety and Security at 423-652-4333. The security officer receiving the report will notify the Title IX Coordinator.

REPORTING A VIOLATION OF THIS POLICY

Persons who feel they have been victims of any violation of any section of this policy have several options for reporting a violation.

Students may report any behavior believed to be a violation of the Relationship Conduct Policy to the Vice President for Student Affairs and Dean of Students, the Title IX Coordinator, or the Assistant Title IX Coordinator. All employees are expected to be knowledgeable about the process for reporting complaints as well as referral sources for students, such as those provided by the Counseling Center and the Chaplain's Office.

Employees may report any behavior believed to be a violation of the Relationship Conduct Policy to direct supervisors, the Title IX Coordinator, or the Assistant Title IX Coordinator. Supervisors are expected to be knowledgeable about where and how to report an employee complaint. Employees are not required to report an incident to direct supervisors before reporting an incident to the Title IX Coordinator or the Assistant Title IX Coordinator.

King University has developed a Relationship Conduct Policy Complaint Form for use in reporting alleged violations of this policy. Use of the Complaint Form is encouraged, but not required. The complaint process may begin with an oral statement, , however, unlike race, color, national origin and religious discrimination, sex discrimination under Title IX, requires a written, signed complaint to initiate a formal process. In instances where the Title IX Coordinator or Assistant Title IX Coordinator may be implicated in the alleged violation, the complaint may be submitted to the King University President. All complaints will be responded to in a manner compliant with King University's obligations under the law..

Title IX requires that King University must respond when it has actual knowledge of sexual harassment that occurred within the University's educational programs or activities against a person in the United States.

Requests for confidentiality during the complaint process will be honored to the fullest extent possible; however, complete confidentiality may not be guaranteed, especially if maintaining the confidentiality would impede a compliant response.. The Assistant Title IX Coordinator, in conjunction with the Title IX Coordinator, is responsible for evaluating and responding to requests for confidentiality, and will consider a wide range of factors such as the risk that the alleged perpetrator will commit additional acts, whether a minor is involved, whether a weapon was used, and whether a pattern of violence is suspected. Generally, reported information will only be disclosed with those persons necessary to handle King University's response to the report.

Sometimes, individuals are reluctant to come forward to report perceived violations of this policy out of fear that they may be charged with violations of other policies. To ensure that all perceived violations of this policy are reported so that those affected can receive the support and resources needed, the University may choose not to charge students who report violations of this policy with violations of other policies.

State and federal laws may require employees to report certain behaviors, especially those constituting a crime, to a higher authority within King University, who may be required to report to off-campus officials for additional investigation, as warranted. King University employees should refer to the Mandatory Reporters Policy for further information. In no case should King University employees undertake their own investigations into a complaint unless designated by the Title IX Coordinator or the President to do so.

Pursuant to Tennessee State Law, faculty and staff (other than those whose job descriptions include the role of counselor or chaplain—unless there is an immediate threat to any member of the University community or a report of sexual abuse of a minor) must refer an individual who experienced rape or non-consensual sexual intercourse occurring on campus to the appropriate victim services and report the incident internally within King University. Security officers receiving a report from a victim of any type of rape or non-consensual sexual intercourse occurring on a University campus must report to the Director of Safety and Security, who then

must report the incident to the law enforcement agency having jurisdiction over the campus location.

Confidential and Anonymous Reporting

King University encourages those who have suffered from a violation of this policy—especially victims of sexual violence, to talk to someone about what happened so that victims can get the support they need and that the University can respond appropriately.

Certain employees on campus are able to maintain victims' confidentiality. Counselors employed with the King University Counseling Center (423-652-4742) and the University Chaplain (423-652-4708) are available for confidential discussions about these matters. Counselors and the Chaplain are able to maintain absolute confidentiality in all but the rarest circumstances (such as sexual abuse of a minor). Discussing a violation of this policy with a counselor or the Chaplain does not constitute reporting the violation and will not result in an investigation into the allegation without a victim's consent.

However, to make a report of a violation of this policy that will result in a University response, students should contact the Vice President for Student Affairs and Dean of Students, the Title IX Coordinator, or the Assistant Title IX Coordinator.

Employees wishing to make a report of a violation of this policy should contact the Title IX Coordinator, or the Assistant Title IX Coordinator.

Additionally, for confidential discussions that do not result in a report to King University, students and employees may contact off-campus resources such as The Crisis Center (276-466-2312) or Abuse Alternatives (423-764-2287).

The Campus Conduct Hotline is available 24 hours a day, seven days a week to report possible violations of this policy. Because the hotline is operated by an independent organization, any calls made through this hotline are completely confidential and anonymous. The toll-free number for this hotline is **866-943-5787**.

These related policies—*Campus Conduct Hotline*, *Campus Conduct Introductory Letter*, and *Campus Conduct Hotline FAQs (Frequently Asked Questions)*—can be found by employees on the Portal in the 'My Documents' section in the Policies, Procedures, and Forms for All Employees folder. Students should refer to the Campus Conduct Hotline section of the Student Handbook.

Reporting and Follow-Up Processes For Conduct Outside the Scope of Prohibited Sexual Harassment, including Race, Color, National Origin Discrimination and Harassment.

Note: Please keep in mind that the process for resolution may vary depending on the type of discrimination and will follow the appropriate law.

The following steps will occur as part of the process for reporting a violation of this policy.

I. Campus Conduct Hotline

1. Once a call is received, an explanation of the Campus Conduct Hotline program will be provided. The option to file a report in another language other than English is available.

At the beginning of the interview, a five-digit PIN will be provided as a randomly generated case number to obtain updates and request additional information. This PIN should be retained because it is the only way to obtain updates and additional information. Updates may be obtained at any time until the case is closed.

2. An interview will be conducted about the question or concern.
3. Interviews are not recorded, but the interviewer will maintain notes from the conversation. Because of the confidentiality of the process, it is important that specific information be provided by the person making the report.
4. The person making the report is not required to provide personally identifiable information. However, in some cases, the absence of personally identifiable information may inhibit King University's ability to respond effectively to the reported concern.
5. Within one business day of the call being made to the hotline, a summary of the interview will be forwarded to King University. Typically, an initial response to the complainant is provided within five business days; the complainant contacts the hotline to obtain the response. At that time, additional information may be required. Alternatively, those reporting can provide their names and telephone numbers if they want someone to contact them directly.

Reporting Criminal Behavior

To report criminal behavior, students and employees may wish to contact the appropriate law enforcement agency. For crimes that occur on the Bristol campus or elsewhere in Bristol, Tennessee, students and employees can contact the Bristol Tennessee Police Department at 423-989-5600 or by dialing 911.

Persons reporting complaints may request that a King University representative assist them in reporting to the police department and throughout the remaining process. Law enforcement may always be contacted, regardless of any other actions reporting persons choose to take under this policy. It is important to preserve evidence as may be necessary to the proof of a crime.

Reporting an incident of criminal behavior to an off-campus law enforcement agency does not constitute filing a report that results in a King University investigation into the incident and does not fulfill an employee's mandatory reporting duties, unless the report is also made to King University personnel (other than a counselor or the Chaplain).

Seeking Support

There are King University representatives and local service agencies available for consultation or counseling. Any of these persons or services may be contacted confidentially and 'off the record' and are able to explain available options. Seeking support from the persons and services listed below does not constitute reporting an incident to King University and will not fulfill an employee's mandatory reporting duties.

- King University Counseling Center 423-652-4742
- King University Chaplain 423-652-4708
- Abuse Alternatives 423-764-2287
- Crisis Center 276-466-2312

PROTECTION OF RIGHTS

The procedures listed in this policy protect the rights of the complainant as well as the respondent, as required by state and federal laws. Each complaint must be properly and promptly investigated and, when warranted, appropriate disciplinary action is taken against the respondent. Both the complainant and respondent can expect:

Note: Please keep in mind that the process for resolution may vary depending on the type of discrimination and will follow the appropriate law.

- Notice of the nature of the complaint
- The burden of gathering evidence and the burden of proof remains on King University, not on these parties
- The opportunity to provide information, offer inculpatory and exculpatory evidence, and present fact and expert witnesses relevant to the complaint
- Written notice regarding meetings, interviews, or hearings where the party's presence is requested
- The opportunity to have an advisor of their choice during the investigative and review process (Note: See below for additional information about advisors)
- Reasonable time to prepare any necessary responses
- Written notice of dismissal and the reasons for dismissal when mandatory or discretionary
- Privacy in accordance with this policy and with any legal requirements
- The opportunity to restrict access and records of the party's medical, psychological, and similar treatment records unless the party provides written consent to the University
- The opportunity to raise concerns regarding bias or conflict of interest on the part of any person representing King University in the investigative or review process
- Written notice of the outcome of the investigation and of all decisions during the review process
- Freedom from retaliation or intimidation (Note: See below for additional information about retaliation)
- Reasonable interim supportive measures (Note: See below for additional information about supportive measures)

Both the complainant and respondent are expected to:

- Refrain from retaliation or intimidation of any person involved in the process
- Provide truthful and complete information during the investigative and review processes

Advisors

Note: Please keep in mind that the process for resolution may vary depending on the type of discrimination and will follow the appropriate law.

Complainants and respondents who participate in a relationship conduct investigation and hearing process each have the right to have one person of their choosing to serve as an advisor throughout the investigation and hearing process. The right to an advisor is extended so that the complainant or respondent can identify someone to assist them with navigating and understanding the investigation process. This assistance includes providing support during each portion of the process, including meetings and interviews, and conducting cross-examination during the hearing that is associated with the investigation and hearing process.

It is recommended that an advisor not be someone who is a witness in the matter being investigated. King University recommends that parties obtain their own advisors; however, for complainants and respondents who do not have an advisor, the University will provide one. King University relationship conduct advisors have received training in Title IX, the King University

Relationship Conduct Policy, and related investigation and hearing procedures, including the scope of permissible cross-examination. However, an advisor's opinion based on his or her training may not be definitive in the complainant's and the respondent's current situation. Additionally, complainants and respondents are encouraged to contact legal counsel if legal advice is needed.

Retaliation

Retaliation in response to matters related to this policy or Title IX is prohibited. Neither King University or any other person may intimidate, threaten, coerce, or discriminate against someone for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the person 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.

What constitutes retaliation for purposes of this policy are: intimidation, threats, coercion, or discrimination, including charges against a person for code-of-conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this policy.

King University must keep confidential the identity of any person who has made a report or complaint of sex discrimination, including any person who has made a report or filed a formal complaint of sexual harassment, any complainant, any person who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures set forth in this policy.

The following identifies specific circumstances related to retaliation:

1. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited in the above section titled Retaliation.
2. The charging of a person with a code-of-conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation.

Supportive and Protective Measures

Note: Please keep in mind that the process for resolution may vary depending on the type of discrimination and will follow the appropriate law.

In response to a disclosure from a student or employee, the Title IX Coordinator works in conjunction with other University representatives to provide supportive measures or protective measures as appropriate.

Supportive measures are types of assistance that the University can provide to a student or employee focused on protecting the person's ability to access his or her education or employment. Supportive measures are more fully defined in the appendix of this policy. Because these measures are supportive in nature, there is no formal conduct or grievance process required. Persons often access these resources without disclosing further information about the incident or the identity of the person causing the harm.

Supportive measures can include, but are not limited to:

- Academic support
- Counseling and healthcare assistance
- Employment assistance
- Financial aid assistance
- Housing changes for disclosing students
- No-contact directives or agreements
- Letters of trespass
- Referrals to free legal services
- Transportation assistance
- Visas or immigration assistance

Protective measures are interventions that require the University to affect someone else's ability to access their education, campus, or employment. That means that once a protective measure is put in place, another person may be removed from the campus, or may otherwise be placed on restriction. These types of measures *do* require a formal complaint or grievance process because they affect someone else's rights.

These can include, but are not limited to:

- Emergency removal or interim suspension
 - Nothing in this policy precludes King University from removing a respondent from a King University education program or activity on an emergency basis, provided that King University a) undertakes an individualized safety and risk analysis, b) determines that an immediate threat to the physical health or safety

of another person arising from the allegations of sexual harassment justifies removal, and c) provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

- This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.
- Paid or unpaid administrative leave
 - Nothing in this policy precludes King University from placing a non-student employee respondent on administrative leave during the pendency of a grievance process under this policy.
 - This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.
- Moving an alleged wrongdoer out of residence hall housing or to another part of residence hall housing
- Restrictions of movement on campus
- Termination of employment (as discipline)

COMPLAINT RESOLUTION PROCESS

The information in this section provides details regarding the informal and formal resolution process. *Note: Please keep in mind that the process for resolution may vary depending on the type of discrimination and will follow the appropriate law.*

Informal resolution process

After meeting with the Complainant, the Title IX Coordinator or Assistant Title IX Coordinator will engage in an initial threat assessment. In cases that do not involve a complaint of sexual harassment, sexual abuse by an employee, extreme violence, hazing, sexual assault, or behavior that the University believes will have a severe impact on other members of the campus community, the Coordinator or Assistant Coordinator may determine, with the consent of the parties, that the most prompt and effective way to address a concern under the Relationship Conduct policy is through an informal resolution process.

This process takes place before an investigation and does not involve an investigative report or a determination as to whether a policy has been violated, and there has been no request for a hearing under Title IX. (Note: An informal resolution taking place after an investigation has begun does not require a written report and a determination as to whether a policy has been

Violated. Typically, informal resolution can occur any time before a determination.) The purpose of the informal resolution process prior to an investigation is to ensure that the respondent is aware of the specific concerns raised, that the inappropriate behavior (if any) stops, and any miscommunication between the parties can be resolved. In these cases, the Title IX Coordinator or Assistant Title IX Coordinator may handle the informal resolution process or

delegate it to an appropriate person, such as the Vice President for Student Affairs and Dean of Students if both parties are students.

The steps taken for an informal resolution process before an investigation are as follows:

1. Interview the complainant and document the concerns
2. Meet with the respondent to make him or her aware of the concerns and hear the respondent's perspective on the matter
3. Ensure that the complainant and respondent are aware of the policies and their rights
4. Discuss with the respondent appropriate conduct moving forward, including avoiding conduct that could be considered retaliatory
5. Follow-up with the complainant regarding the respondent's responses
6. Document the actions taken to complete the informal resolution process

Formal resolution process of an investigation

The steps taken for a formal resolution process of an investigation are as follows:

1. Appointment of investigator

Once a complaint has been received by or forwarded to the Title IX Coordinator or the Assistant Title IX Coordinator, the Coordinator and Assistant Coordinator shall consult, and the Title IX Coordinator shall immediately designate an investigator for the complaint, which will ordinarily be the Assistant Title IX Coordinator. In most cases, the Assistant Title IX Coordinator will supervise all investigations. In appropriate instances, the Title IX Coordinator may designate the Vice President for Student Affairs and Dean of Students as the investigator. This investigation process may not apply to certain complaints. For example, if the Title IX Coordinator were the respondent in a complaint, the Assistant Title IX Coordinator would replace the Coordinator for purposes of that complaint. The parties will be provided notice of the identity of the investigator and given an opportunity to object to the investigator based on conflict of interest. When objects are raised, an alternate investigator will be designated.

2. Notification of complaint in cases not involving allegations of sexual harassment

As soon as reasonably appropriate, given the nature of the complaint, the timing of the complaint, and other factors, the investigator shall notify the respondent in writing that a complaint has been made alleging that he or she violated the Relationship Conduct Policy. At the time a respondent is made aware of a complaint against him or her, notification of the respondent's rights and responsibilities under relevant policies must be provided to the respondent. In most instances, the respondent should be notified within five business days of the filing of the complaint. The respondent shall respond in writing to the complaint within five business days following the date of receipt of the investigator's notification of a requested response to the allegations.

If either the complainant or the respondent is a student, the investigator should

communicate the prohibition against disclosure of personally identifiable information with regard to the student, based on FERPA.

3. Dismissal of formal complaint of sexual harassment under Title IX

If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in King University's education program or activity, or did not occur against a person in the United States, then King University must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. Such dismissal does not preclude action under the non-Title IX provisions of this policy, the *Student Conduct Policy*, or other King University employment policies.

King University may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a) a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any of its allegations, b) the respondent is no longer enrolled or employed by King University, 3) or specific circumstances prevent King University from gathering evidence sufficient to reach a determination as to the formal complaint or its allegations.

Upon a dismissal required or permitted pursuant to the above, King University shall promptly simultaneously send the reason for dismissal and written notice of the dismissal to the parties.

4. Notice of allegations in complaints of sexual harassment

Upon receipt of a complaint of sexual harassment, King University will provide the following written notice to the parties who are known:

- ☐ Notice of King University's grievance process contained in this policy, including any informal resolution process
- ☐ Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined herein, 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 harassment; and the date and location of the alleged incident, if known.
 - The written notice will include 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 grievance process.
 - The written notice will inform the parties that they may have an advisor of their choice—who may be, but is not required to be, an attorney—and may inspect and review the evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint.
 - The written notice will describe the standard of evidence.

- The written notice will inform the parties of the prohibition against knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, King University decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to the preceding paragraph of this section, King University will provide notice of the additional allegations to the parties whose identities are known.

5. Consolidation of formal complaints under Title IX

King University may consolidate formal complaints as to allegations of sexual harassment 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 harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this policy to the singular “party,” “complainant,” or “respondent” would include the plural, as applicable.

6. Conducting the investigation

General information

In consultation with King University’s legal counsel, as appropriate, the investigator shall conduct an investigation of the complaint. In conducting the investigation, the investigator shall interview, or attempt to interview, the complainant, the respondent, and other persons believed to have knowledge related to the matter being investigated. The investigator collects available supporting evidence, which may include, but is not limited to documents, emails, video or audio surveillance, or other physical evidence. The investigator may re-interview any witnesses or parties as needed.

It is the responsibility of the investigator to weigh the credibility of all persons interviewed, and determine the weight to be given to information received during the course of the investigation. In nonsexual harassment matters, the investigator shall provide an investigative determination (or recommended finding), and recommendations for the appropriate next steps, including but not limited to recommended disciplinary action or sanctions.

All investigatory notes and documents shall be considered documents prepared in anticipation of litigation or law enforcement unit records. At least 10 business days before a hearing, the University shall send all evidence it has gathered to involved parties and their advisors in an electronic format or a hard copy, including evidence the University does not intend to present or does not believe is relevant. Evidence not disclosed to the involved parties may not be used by the University in any disciplinary proceeding.

All King University students and employees are expected to cooperate fully with any investigation; however, the University cannot compel cooperation. Regardless of a victim’s willingness to participate in any investigation or disciplinary process, King University will offer supportive measures. Furthermore, in implementing the grievance process contained in this policy, King University will 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.

Investigation of a complaint of sexual harassment

When investigating a complaint of sexual harassment and throughout the grievance process, King University will:

- i. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on King University and not on the parties, provided that King University cannot access, consider, disclose, or otherwise use a party'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 King University obtains that party's voluntary, written consent to do so for a grievance process under this policy (if a party is not an "eligible student," as defined in 34 CFR 99.3, then King University must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3).
- ii. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- iii. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- iv. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, King University may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
- . Provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- i. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which King University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence (whether obtained from a party or other source) so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, King University will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The parties must have at least 10 days to submit a written response, which the investigator will consider prior to

completion of the investigative report. King University will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

- ii. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this policy or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

7. Maintaining confidentiality (once the investigation has begun)

To the maximum extent possible, the investigation into nonsexual harassment matters will be conducted in such a manner to protect the confidentiality of all parties. In order to conduct an effective investigation, it may be necessary to reveal certain information, including the identity of the complainant, to the respondent. If the complainant requests confidentiality or asks that the complaint not be pursued, King University will take all reasonable steps to investigate and respond to the complaint that are consistent with the request for confidentiality or request not to pursue an investigation. If the complainant insists that his or her name or other identifiable information not be disclosed to the respondent, the investigator will inform the complainant that the request may limit King University's ability to investigate and respond to the incident.

All requests for confidentiality will be evaluated by the Assistant Title IX Coordinator in conjunction with the Title IX Coordinator in the context of King University's responsibility to provide a nondiscriminatory environment for the campus community. A range of factors may be considered when evaluating a request for confidentiality, including (but not limited to) whether there is a continuing threat to the campus community, the seriousness of the alleged violation, whether violence or a weapon was involved, other complaints about the same respondent, the age of the victim, and the existence of other available evidence. If King University cannot ensure confidentiality, it will inform the complainant.

Notwithstanding the foregoing, Title IX requires King University to notify the parties in a sexual harassment complaint of the identities of the parties involved in the incident, if known.

8. Mediation in nonsexual harassment matters

Mediation or informal resolution is not permitted when the respondent is an employee and the complainant is a student.

Mediation may be an appropriate method of reaching an informal resolution to a complaint: in cases that do not involve sexual harassment, violence, assault, or any nonconsensual sexual contact; in cases that do not impact a broader population than those persons directly involved in the complaint; or in cases that do not involve a student complaint against an employee in a position of authority over the student. At any time during the course of the investigation, the investigator may suggest mediation to both the complainant and the

respondent individually for the purpose of resolving the complaint informally. Mediation is not required but can be appropriate when both parties agree to mediate the complaint.

Mediation is conducted by a neutral third party who assists both the complainant and respondent in negotiating a resolution to the alleged harassment or other discrimination. The mediator will be a member of the pool of persons available to serve on the hearing panel. Mediation is intended to be a fair and efficient process where a neutral mediator can help the complainant and respondent reach a mutually agreeable resolution.

Mediation gives the parties the opportunity to discuss the issues in dispute, to clear up misunderstandings, to determine underlying interests or concerns, to find areas of agreement, and then to transform the areas of agreement into a workable resolution. Once begun, mediation may be ended at any time during the process by either party.

If the parties are in agreement on the resolution of the complaint, the deciding executive (as defined below) will review the proposed resolution. If the informal resolution is accepted by the deciding executive, the incident will be considered closed and monitored by the appropriate King University officials. If the informal resolution is rejected by the deciding executive, needed changes will be made and resubmitted for approval by all parties involved.

If an agreed resolution cannot be reached, the investigator will continue with the investigation process. If at any time the terms of the agreed resolution are broken, the Title IX Coordinator or Assistant Title IX Coordinator may direct the investigator to reopen the investigation into the complaint, or a new complaint may be filed.

9. Informal resolution of formal complaints of sexual harassment

King University may not require, as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this policy. Similarly, King University may not require the parties to participate in an informal resolution process under this policy and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility, King University may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that King University:

- i. Provides to the parties a written notice disclosing: a) the allegations; b) the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and c) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared
- ii. Obtains the parties' voluntary, written consent to the informal resolution process

- iii. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student

10. Application of the standard of proof

The standard of proof for adjudicating complaints regarding violations of the Relationship Conduct Policy is a *preponderance of the evidence*. A preponderance of the evidence means that it is more likely than not that a violation of the policy occurred.

11. Issuing the investigative report and recommended findings

In all investigations, the investigator shall issue an investigative report. The report shall outline the basis of the complaint, including the dates of the alleged occurrences, the response of the respondent(s), all evidence considered during the investigation, and all attempts to resolve the Complaint informally.

In matters that do not involve a complaint of sexual harassment, the investigative report shall contain the investigator's recommended findings as to whether there is a preponderance of evidence of a violation of the Relationship Conduct Policy. If the Investigator's Recommended Finding is that a policy violation occurred, the Investigator shall set forth any recommended disciplinary actions or other remedial or corrective actions.

The investigator may engage King University's legal counsel in reviewing the investigative report and its recommended findings.

12. Confirmation or rejection of recommended findings in matters that do not involve complaints of sexual harassment

The investigative report is forwarded to the deciding executive for review and confirmation or rejection of the recommended findings and recommended disciplinary actions or other remedial or corrective actions. The following shall serve as deciding executives:

- For staff employees, the Vice President for a respondent's department in consultation with the Vice President for Administration and Finance, Chief Financial Officer
- For faculty members, the Vice President for Academic Affairs
- For students, the Vice President for Student Affairs and Dean of Students

For respondents who are students, when the recommended findings are referred to the Vice President for Student Affairs and Dean of Students as the deciding executive, this shall mark the beginning of the Student Conduct Process for student violations. The Student Conduct Process will then apply to all complaints involving allegations of violation of the Relationship Conduct Policy, *except that* the Honor Council Hearing and Appeals processes shall be replaced by the Review Panel and Reviewing Executive processes described below. All other provisions of the Student Conduct Process up to the point of an Honor Council Hearing remain intact, including options for Administrative Agreement and Administrative Action.

Before issuing the findings, the deciding executive may consult with King University's legal counsel for consideration of whether the findings may reasonably eliminate the discrimination or hostile environment and prevent recurrence of the violation. If the deciding executive confirms the recommended findings of the investigative report, the deciding executive shall issue the findings, implement the proper disciplinary actions, and forward the findings to the Title IX Coordinator for consideration of whether any discriminatory or hostile environment has been eliminated and whether prevention of recurrence of any violation has been adequately addressed.

If the deciding executive rejects the recommended findings of the investigative report, the complaint will be considered to be in dispute and will be reviewed by the Review Panel automatically.

13. Disputing a finding in matters that do not involve a complaint of sexual harassment

The respondent or the complainant has the right to dispute the deciding executive's findings. Findings may be disputed by submission of additional evidence to the investigator or by request of a hearing before a Review Panel.

If either party believes that the decision did not take into account all available evidence, documents, witnesses, or aggravating and mitigating factors, the party may provide such additional information to the investigator within 10 business days of issuance of the investigative report. If a party makes such an additional submission, the investigator shall have five business days to consider and act upon the additional submission. (Note: If the additional submission results in significant investigative steps being undertaken or repeated, this timeframe may be extended in the judgment of the investigator). After consideration of the additional submission, the investigator shall issue a written final investigative report confirming the original recommended findings or revising the recommended findings as appropriate. The deciding executive shall then reconsider the findings in light of the final investigative report and shall issue a reconsidered finding.

If either party believes that the findings (either the original findings or a reconsidered finding) is in error, that party may request an appeal before a Review Panel within 10 business days of issuance of the findings by making a written request to the Title IX Coordinator. The request is not required to be in any particular form, other than to reference the finding and to request an appeal before the Review Panel. It is not necessary to submit additional evidence to the investigator before requesting an appeal before the Review Panel. The Review Panel can decline to consider additional evidence during an appeal that was not submitted to the investigator unless good cause exists for not making the additional submission. Good cause may include such factors as the evidence not being discoverable at the time through the exercise of due diligence or evidence that was concealed by another person. If the finding is not disputed, the finding (either an original finding or a reconsidered finding) is final.

14. Review panel hearing

A Relationship Conduct Review Panel shall be constituted as a standing committee of King University. The Panel shall be appointed by the Title IX Coordinator from among a pool of senior King University administrators who are trained regarding Title IX and other

relevant laws. The Panel may include external professionals with specific expertise in Title IX and other relevant laws, as determined in the discretion of the Title IX Coordinator.

Upon conclusion of a Title IX investigation, the Title IX Coordinator shall appoint a hearing panel of four members, one of which shall serve as the Chair, to conduct the hearing. The Chair shall preside at the hearing. Cases shall be adjudicated by persons distinct from those who conducted the investigation and free of conflicts of interest. For example, if the respondent is a student-athlete or an employee member of the Athletics Department, no athletic administrator may serve as a voting or non-voting member of the panel. Furthermore, neither the Title IX Coordinator nor the investigator of the matter shall be on the hearing panel.

Within five business days of appointment of the hearing panel, the Chair shall set a hearing date and time. The hearing shall be as soon as reasonably convenient, but within 20 business days of the appointment of the hearing panel. A live hearing is the proceeding at which the complainant and the respondent (and any of their advisors) may present witnesses, evidence, and arguments to the Review Panel in real-time pursuant to the provision of this policy.

At the live hearing, the hearing panel shall permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of King University to otherwise restrict the extent to which advisors may participate in the proceedings.

At the request of either party, King University will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the hearing panel and parties to simultaneously see and hear the party or the witness answering questions.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

If a party does not have an advisor present at the live hearing, King University will provide without fee or charge to that party, an advisor of King University's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

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.

The hearing panel 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.

Live hearings pursuant to this policy may be conducted with all parties physically present in the same geographic location or, at King 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.

King University will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. The standard of proof applied by the hearing panel shall be whether the preponderance of the evidence supports a finding that a violation of this policy occurred.

Following the presentation of evidence, all parties other than the hearing panel will be excused and the hearing panel will meet in executive session. During this session, the hearing panel will determine whether the respondent is responsible for violating the Relationship Conduct Policy using the preponderance of the evidence standard. A determination of responsibility for a violation of this policy by a student may result in disciplinary action up to and including expulsion. A determination of responsibility for a violation of this policy by an employee may result in disciplinary action up to and including termination of employment. Sanction decisions require a majority vote of the panel.

If the decision is that the respondent is responsible for a violation of the Relationship Conduct Policy, the hearing panel will also reach a determination as to an appropriate sanction. The appropriate sanction shall be selected based on all relevant factors, including (but not limited to) the severity or pervasiveness of the misconduct; prior misconduct by the respondent; the nature of the misconduct, including whether violence or use of weapons was a factor; the impact on the complainant; any impact on the broader campus community; maintaining a safe and welcoming environment; and any mitigating, aggravating or other compelling circumstances. If the decision is that a party is not responsible for a violation of the Relationship Conduct Policy, the matter shall be closed. Appropriate remedial measures may remain in effect to support a complainant.

Parties will receive a written decision of the result of the hearing, containing:

- i. Identification of the section(s) of the Relationship Conduct Policy alleged to have been violated, including an identification of the allegations potentially constituting sexual harassment
- ii. A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to involved parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
- iii. Findings of fact supporting the determination
- iv. Conclusions regarding the application of the policy to the facts
- v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility
- vi. Any disciplinary sanctions the University imposes on the respondent,
- vii. Any remedies provided to the complainant designed to restore or preserve access to the University's education program or activity

- viii. The University's procedures and permissible bases for either party to appeal

King University will provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that King University provides the parties with the written determination of the result of an appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX Coordinator is responsible for effective implementation of any remedies.

15. Appeals process

Either party may appeal a determination regarding responsibility, a dismissal of a formal complaint or of its allegations, or a sanction by submitting a written notice stating the intent to appeal to the Title IX Coordinator within seven business days of receiving the hearing panel's written decision and sanction. (Note: A notice of appeal may be submitted after the deadline if the appealing party shows that that new, previously unavailable evidence came to light or that there is a compelling reason for the delay). The University shall notify the other party of the notice of appeal no later than one business day after it is received.

Appeals may only be filed on one or more of the following bases:

- i. A procedural irregularity that affected the outcome of the matter
- ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter
- iii. The Title IX Coordinator, investigator, or member of the Review Panel had a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent that affected the outcome of the matter
- iv. Unduly harsh or arbitrary sanctions are not consistent with the conduct that resulted in the finding or sanction

The Title IX Coordinator will convene a three-member appellate panel to review the decision. The composition of the appellate panel shall be impartial to avoid prejudice. The appellate panel shall be convened no sooner than seven business days after the submission of an intent to appeal and no later than 30 days after such a submission.

Parties have the right to challenge the appellate panel for bias or any conflicts of interest that could reasonably have the potential to undermine the integrity of the appellate process. This challenge may not be heard by the appellate panel itself, although appellate panel members shall recuse themselves from a case if they have a conflict of interest or if they cannot perform their duties in an unbiased manner for whatever reason. Neither the Title IX Coordinator, anyone involved in conducting the investigation, nor any member of the hearing panel may serve on the appellate panel for a case in which they were previously involved.

The appealing party must submit a written statement to the appellate panel no later than five business days in advance of its meeting explaining why the hearing panel's decision should be changed. The appellate panel shall forward this statement to the other party no later than one

business day after it is received. The other party and third parties may submit statements to the appellate panel but are not required to do so.

The appellate panel's review will be limited to determining whether:

- Established procedures were followed
- Parties were treated equitably
- Parties had a reasonable opportunity to prepare and present material information
- The panel's factual determinations are free from obvious error or failure to consider any material evidence
- The panel's decision was based on substantial information in the record and is rational
- The panel's reasoning is clear from its letter explaining its decision
- No new, previously unavailable evidence has emerged that would materially affect the outcome of the case
- The sanction levied is proportional to the violation(s) committed
- The responsible student's conduct was prohibited by the Relationship Conduct Policy

If the appellate panel finds reason for concern about any of the issues listed above, then it must consider whether the error, or newly discovered evidence, could have affected the outcome of the hearing. If the shortcoming was inconsequential or the new evidence is irrelevant, then the decision may be affirmed. If, however, there is a reasonable possibility that the outcome might have been different, or that the sanction was disproportionate, the hearing panel's decision must be modified accordingly, or the case must be sent back for a rehearing. Appeals from the respondent may not result in increased sanctions.

The appellate panel will promptly inform both parties simultaneously of its conclusions and the reasons for those conclusions in writing.

This policy shall replace or supplant any other disciplinary, grievance, or conduct process of King University in all matters of relationship conduct *except that*: a) nothing in this Relationship Conduct Policy shall be interpreted to interfere with a faculty member's right to appeal a final outcome to the Executive Committee of the Board of Trustees pursuant to the Faculty Handbook procedure governing Faculty Appeals of Other Matters of Significance, and b) this policy is designed to work within the existing Student Conduct Process, but to the extent that there is any conflict between the Student Conduct Process and this policy, this policy shall prevail.

RECORDKEEPING

After completion of the investigation, the investigative report and all documentation reviewed in support of the investigation will be maintained by the investigator or Title IX Coordinator. No other office will maintain a copy of the investigation file. Investigative reports will not be

placed in an employee's personnel file; however, the final document adjudicating a Title IX complainant will be placed in the respondent's personnel file. For matters involving faculty, this will be the faculty member's Academic Affairs personnel file.

King will maintain for a period of seven years records of:

- Each sexual harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript required under this policy, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity
- Any appeal and the result therefrom;
- Any informal resolution and the result thereof;
- All materials used to train Title IX Coordinators, investigators, decision-makers, and persons who facilitate an informal resolution process (Note: King will make these training materials publicly available on its website)
- Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.

PROTECTION FROM BAD FAITH COMPLAINTS

A complaint found to have been intentionally dishonest or made maliciously will subject the complainant to King University's disciplinary process for students or employees.

OTHER IMPORTANT ITEMS

Use of alcohol or other drugs by the respondent will never function as a defense to a violation of this policy.

The sexual orientation or gender identity of persons engaging in sexual activity is not relevant to allegations under this policy.

For reference to the pertinent state laws on sex offenses, visit <http://www.michie.com>. A formal complaint is not required to begin an investigation into behavior that may constitute a violation of this policy. Such behavior that may trigger an investigation includes, but is not limited to, a student's identifiable lack of motivation in the classroom or athletic environment, possible violations observed by King University employees, or other reasonable suspicion of a violation of this policy.

APPENDIX DEFINITIONS

Abuse: Abuse is the inflicting or attempting to inflict physical injury on a person (adult or minor) by other than accidental means; placing a person in fear of physical harm or physical restraint; maliciously damaging the personal property of the abused party, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, kept, or held by the person; or placing the person in fear of physical injury to the person's animal(s).

Actual knowledge: Actual knowledge means notice of sexual harassment or allegations of sexual harassment to King University's Title IX Coordinator or any official of King University who has authority to institute corrective measures on behalf of King University ("official with authority"). Notice occurs whenever a Title IX Coordinator or official with authority: a) witnesses sexual harassment; b) hears about sexual harassment or receives sexual harassment allegations from a complainant or a third party (e.g., a complainant's parent, friend, or peer); or c) receives a written or oral complaint about sexual harassment or sexual harassment allegations. The person who reports does not need to be the complainant; rather, a report may be made by any person. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of King University with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify someone as an Official with Authority.

Complicity: Complicity is any act taken with the purpose of aiding, facilitating, promoting, or encouraging the commission of an act of relationship misconduct by another person.

Complainant: A Complainant is any individual, including a student or employee (including applicants for employment, student-employees, unpaid interns, volunteers, contractors), or participant in an education program or activity who has reported being, or is alleged to be, impacted by Prohibited Sexual Harassment as defined by this Policy, and who was employed, or participating or attempting to participate in a program or activity offered by King University at the time of the alleged Prohibited Sexual Harassment.

Consent: Consent is clear, knowing, revocable and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable, clear permission regarding willingness to engage in (and the conditions of) sexual activity.

Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity.

Previous relationships or prior consent does not imply consent to future sexual acts. In order to give effective consent, one must be of legal age.

Note: There is no requirement that a party physically resists the sexual advance or request, but such resistance demonstrates non-consent. The presence of force is not proven by the absence of physical resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced. For example, sexual activity while a person is under the influence of drugs or alcohol may be non-consensual, but that does not mean it is necessarily "forced."

Discrimination: Discrimination against another person or group because of race, color, religion, national or ethnic origin, sex, age, or disability is not tolerated. Discrimination can include verbal or physical conduct that denigrates or shows hostility or aversion toward a person or group and: a) has the purpose or effect of creating an intimidating, hostile, or offensive environment; b) has the purpose or effect of unreasonably interfering with someone's academic or job performance; or c) otherwise adversely affects a person's educational or employment opportunities.

King University seeks to reasonably accommodate students with disabilities. Students who believe they have experienced discrimination related to a disability should contact the Director of Learning and Disability Services, the Vice President for Student Affairs and Dean of Students, or the Assistant Title IX Coordinator.

Force: Force can include the use of physical violence, imposing on someone physically, or the use of a chemical substance (including alcohol) to gain sexual access. Force also includes threats, intimidation (or implied threats), and coercion that seeks to overcome resistance or produce consent (e.g. "Have sex with me or I'll hit you" or "Okay, don't hit me; I'll do what you want.").

Education program or activity: The term to describe locations, events, or circumstances over which King University exercises substantial control over both the respondent and the context in which sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the institution.

Formal complaint: The term that indicates a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that King University investigate the allegation of sexual harassment. 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 King University.

As used in this definition, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by King University) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant.

Gender-based harassment: This term includes harassment based on gender, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when one or both of the conditions below are present:

1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs or activities or is used as the basis for University decisions affecting the person (often referred to as "quid pro quo" harassment)
2. Such conduct creates a hostile environment, which exists when the conduct is sufficiently severe, persistent, or pervasive (from both a subjective and an objective perspective) that it unreasonably interferes with, limits, or deprives someone from participating in or benefiting from the University's education or employment programs or activities.

In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including, but not limited to:

- The frequency, nature, and severity of the conduct
- Whether the conduct was physically threatening
- The effect of the conduct on the complainant's mental or emotional state
- Whether the conduct was directed at more than one person
- Whether the conduct arose in the context of other discriminatory conduct
- Whether the conduct unreasonably interfered with the complainant's educational or work performance or University programs or activities
- Whether the conduct implicates concerns related to academic freedom or protected speech

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of sexual assault, for example, may be sufficiently severe to

constitute a hostile environment. In contrast, the perceived offensiveness of a single spoken or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

Incapacity: The state in which someone lacks capacity to give knowing consent (e.g., to understand the 'who, what, when, where, why or how of their sexual interaction). Often, a person who is incapacitated cannot make rational, reasonable decisions. This policy also covers a person whose incapacity results from mental disability, sleep deprivation, involuntary physical restraint, alcohol consumption, or from taking drugs. For example, sexual activity with someone known to be—or based on the circumstances should reasonably have been known to be—mentally or physically incapacitated (by alcohol or other drug use, unconsciousness, blackout, etc.) constitutes a violation of this policy.

Additionally, possession, use, or distribution of any date rape drug including but not limited to Rohypnol, Ketamine, GHB, or Burundanga, is prohibited, and administering one of these drugs to another person is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org>.

Live hearing: The proceeding at which the complainant and the respondent (and any of their advisors) may present witnesses, evidence, and arguments to the Review Panel in real-time pursuant to the provision of this policy.

Non-consensual recording or distribution of intimate images or voice conversations: The non-consensual recording of intimate parts or intimate conversations is prohibited. The non-consensual distribution or exposure of intimate images, intimate voice recordings, or intimate video recordings is also prohibited.

Non-consensual recording occurs when one person has not been granted permission, licensed, or privileged to photograph, film, videotape, record, reproduce, or otherwise capture an image or record or in any manner, an image or recording of another person's intimate conversation or parts.

Non-consensual distribution or exposure of intimate images or voice recordings occurs when one person has not been granted permission, licensed, or privileged to photograph, film, videotape, record, or otherwise expose in any manner, the image of another person's intimate conversation or parts.

The term intimate conversation describes the discussion of intimate parts or voice recordings, photographs, or videos of consensual or non-consensual sexual contact or intercourse.

The term intimate parts means any portion of the primary genital area, any portion of the buttock or butt crack, or any portion of the female breast either uncovered or visible through less than fully opaque clothing.

The exposure of another's intimate parts may also be a violation of state law and will be referred to the appropriate law enforcement agency. Non-consensual recording of intimate parts or intimate conversations is not a violation of policy when a law enforcement officer or security officer is acting in the course of their official duties for a lawful purpose.

Respondent: An individual who has been reported to be the perpetrator of conduct that could constitute Prohibited Sexual Harassment under this policy.

In accordance with its obligations under the Title IX Regulations of 2020, the University prohibits sexual harassment, which is conduct based on sex, that satisfies one or more of the following definitions (collectively referred to as "Prohibited Sexual Harassment"):

1. Quid Pro Quo Conduct. An employee conditions the provision of an aid, benefit, or service of [INSTITUTION] on an individual's participation in unwelcome sexual conduct;

2. Unwelcome Conduct. Unwelcome conduct that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to King University education program or activity; or in employment.

3. Sexual assault. This category of prohibited conduct includes the following:

- i. **Sex Offenses**—Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual Act is defined as conduct between persons consisting of:
 - a. Contact between the penis and the vulva, or between penises and vulvas;
 - b. Contact between the penis and the anus;
 - c. Contact between the mouth and the penis;

d. Contact between the mouth and the vulva;

e. Contact between the mouth and anus;

f. Contact between anuses; or,

g. Contact involving any of the above or the buttocks or breasts

- ii. **Non-Consensual Penetration** Actual or attempted penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This includes penetration forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their temporary or permanent mental or physical incapacity.

iii. **Criminal Sexual Contact**

The intentional touching of the clothed or unclothed body parts without the consent of the Complainant for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the Complainant of the Respondent's clothed or unclothed body parts, without the consent of the Complainant for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This offense includes instances where the Complainant is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication of the Complainant.

iv. **Other Lawfully Prohibited Sexual Intercourse**

This category includes conduct constituting sexual assault that does not meet the definition of Non-Consensual Penetration or Criminal Sexual Contact:

- i. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law, regardless of consent.
- ii. Nonforcible sexual intercourse with a person who is under the statutory age of consent, regardless of consent.

4. Dating violence. Violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

5. Domestic violence. A felony or misdemeanor 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 state of Tennessee 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 state of Tennessee.

6. Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

7. Sexual Exploitation occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person, without that person's consent. Examples of behavior that could rise to the level of sexual exploitation include but are not limited to: prostituting another person; recording images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent; distributing images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and, viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, re, and for the purpose of arousing or gratifying sexual desire. Sexual exploitation may occur regardless of whether sexual activity takes place.