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Comparison of Current and Proposed AR 6:2

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The University of Kentucky adopted its first policy on sexual assault in 2009. The policy was promulgated as Administrative Regulation 6:2, a Policy on Sexual Assault, Stalking, and Relationship Violence. In 2011, the U.S. Department of Education issued guidance regarding universities' responsibilities in responding to threats of sexual violence on campus (a so-called "Dear Colleague Letter"). Following on the Dear Colleague Letter, guidance published by the Obama administration in 2013 required universities to issue new rules, and UK complied, issuing a new AR 6:2 in September 2014. Further guidance was then released in April 2015, in the form of another Dear Colleague Letter, requiring universities to enact additional procedures regarding sexual assault allegations. Again, UK complied, issuing a new AR 6:2 in June 2015. That AR 6:2 was updated one last time in June 2016, with the addition of an Appendix, detailing the procedures for handling alleged violations of the Regulation.

Right after the adoption of the most recent version of AR 6:2, the Senate Council charged an Ad Hoc Committee in June 2016 with the task of evaluating the Regulation, addressing sexual assault on campus, and proposing a revision to AR 6:2. The Committee was formed over the following months, and first met in October 2016. In December 2016, the Senate Council added a consideration of AR 6:1, addressing discrimination and harassment, to the Committee's charge. The Committee met weekly until June 2017, when it produced a draft revised AR and a report addressing its finding. The Committee presented its report to the Senate Council in August 2017, amended the report in response to a set of comments from Senate Council, and the Senate Council adopted the final report on September 25, 2017. In November 2017, Ad Hoc Committee Chair Jennifer Bird-Pollan and Senate Council Chair Katherine McCormick met with President Capilouto and General Counsel Bill Thro to discuss the report. A follow-up meeting in February 2018 was attended by Capilouto, Thro, McCormick and Bird-Pollan, as well as Chief of Staff Bill Swinford, Provost Blackwell, and Title IX Coordinator Martha Alexander. At the April 23, 2018 University Senate meeting, President Capilouto announced the central elements of a revision to AR 6:2.

This document is intended to highlight some of the major elements of the AR, including places where the proposed regulation changes the rule that had been in effect under the previous regulation.

MAJOR ELEMENTS:

1. The previous regulation provided that appointments of faculty and staff to the Sexual Misconduct Hearing Panel Pool and the Sexual Misconduct Appeals Board Pool would be made by the President. The new regulation specifies that colleges will be required to send a certain number of faculty members to each pool, and that staff members of the two pools will be selected from the University as a whole.
2. In the previous regulation the Dean of Students represented the University in hearings and appeals. The new regulation establishes that outside counsel will be appointed as “University Counsel” for purposes of representing the University through the hearing and appeals process.
3. The previous regulation allowed any party to a hearing to appeal the result of the hearing. Under the new proposed regulation, only a finding of “responsible” may be appealed, so only the Respondent may appeal. No party may appeal a finding of “not responsible”.
4. Under the previous regulation, a student who was given an interim suspension, pending a hearing, could appeal that interim suspension to the SMAB. An employee who received an interim suspension could not appeal that interim suspension. The proposed regulation allows students to appeal an interim suspension to the Associate Provost for Student and Academic Life, allows faculty employees to appeal an interim suspension to the Provost, and allows staff employees to appeal an interim suspension to the Vice President for Human Resources.
5. The previous regulation established that only a majority of the Hearing Panel (two of the three voting members) were required to make a finding. The proposed

regulation establishes that, in order to make a finding of “responsible”, the three member Hearing Panel must be unanimous.

6. Under the previous regulation, if the Hearing Panel found the Respondent responsible, and recommended sanctions, that recommendation would go to the Dean of Students, in the case of a student respondent, or to the “Appropriate Unit Administrator”, in the case of an employee respondent. The Dean of Students or Appropriate Unit Administrator then had the freedom to change the sanctions, provided that any change in sanctions must be explained in writing to the Hearing Panel and parties. Under the proposed regulation, the recommended sanction (resulting from either a Hearing Panel or the Sexual Misconduct Appeals Board) goes to the Associate Provost for Student and Academic Life, in the case of a student respondent, to the Provost, in the case of a faculty employee respondent, and to the Vice President for Human Resources, in the case of a staff employee respondent. The APSAL, Provost, and VPHR then have the ability to reject or modify the recommended sanctions, provided that any change to the recommended sanction must be provided to the parties involved (although not to the Hearing Panel or Sexual Misconduct Appeals Board).