

Operating Policy and Procedure

OP 12.002 Sexual Harassment, Sexual Misconduct, and Retaliation Policy (Title IX)

DATE: Effective August 14, 2020

PURPOSE: To ensure compliance with federal regulatory requirements of 20 U.S.C. 1681, “Title IX”, including the revisions of 34 CFR §106 and the Violence Against Women Act (“VAWA”) as well as establish community standards regarding sexual harassment, misconduct, and retaliation.

REVIEW: This Policy will be reviewed in July of each year by the Title IX Coordinator(s) or when finalized federal regulations warrant review.

1 Policy

Kellogg Community College (“KCC”) is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from sexual harassment, sexual misconduct, and retaliation. Sexual harassment, which includes sexual assault, dating violence, domestic violence, and stalking (as those offenses are defined in the Clery Act, 20 U.S.C. 1092(f) and the Violence Against Women Act, 34 U.S.C. 1229(a)) will not be tolerated and are expressly prohibited by KCC.

KCC also prohibits retaliation against any person participating in good faith in any investigation or complaint process internal or external to the institution; for bringing a complaint of harassment or misconduct; for assisting someone with such a complaint; for attempting to stop harassment or misconduct.

Persons covered by the scope of this Policy who engage in sexual harassment, sexual misconduct, and/or retaliation may be subject to discipline. Further, KCC may activate remedies to prevent the recurrence of sexual harassment and/or sexual misconduct in the future. KCC values and upholds the equal dignity of all members of its community and strives to balance the rights of involved persons through the grievance procedure. KCC aims to provide a prompt, fair, and impartial response and procedure for those persons involved in an allegation of sexual harassment and/or sexual misconduct. The core purpose of this Policy is the prohibition of sexual harassment as defined by Title IX.

This Policy applies in all KCC programs and activities, including, but not limited to, discrimination in athletics, instruction, grading, and college employment. It is central to the values of the College that any individual who believes they may have been the target of unlawful harassment feel free to report their concerns for appropriate investigation and response, without fear of retaliation or retribution.

Questions regarding Title IX, including its application and/or concerns about noncompliance, should be directed to the Title IX Coordinator(s). All complaints or any concerns about conduct that may violate this Policy and retaliation should be filed with the College’s Title IX Coordinator(s), which can be found in Section 4: Title IX Coordinator(s) of this Policy.

1.A Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator(s). However, if the Respondent is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the College will typically apply the Policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint

1.B Promptness

All allegations are acted upon promptly by KCC after receiving notice or a Formal Complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but KCC seeks to avoid all undue delays within its control. Any time the general timeframes for resolution outlined in the Title IX Policy will be delayed, KCC will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

1.C Jurisdiction

This Policy applies to the education program and activities of the College, to conduct that takes place on the campus or on property owned or controlled by the College, at College-sponsored events, or in buildings owned or controlled by the College. The Respondent must be a member of College's community in order for its policies to apply.

This Policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to College's educational program. The college may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator(s) determines that the conduct affects a substantial College interest.

Regardless of where the conduct occurred, the College will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial College interest includes:

1. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
2. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
3. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
4. Any situation that is detrimental to the educational interests or mission of the College.

If the Respondent is unknown or is not a member of the College community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. Further, even when the Respondent

is not a member of the College's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

In addition, the College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from College property and/or events.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator(s) may be able to assist and support a student or employee Complainant who experiences sexual harassment or retaliation in an externship, study abroad program, or other environment external to the College where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Complainant.

1.D Online Sexual Harassment, Misconduct, and/or Retaliation

The policies of the College are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the College's education program and activities or use College networks, technology, or equipment.

Although the College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.

Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the College's control (e.g., not on College networks, websites, or between College email accounts) will only be subject to this Policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated when such speech negatively impairs or disrupts the Respondent's relationship with the College or the working environment.

1.E Emergency Removal

KCC can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any individual has arisen from the allegations of Sexual Harassment and justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with KCC's Threat Assessment & Behavioral Intervention ("TABI") team, using the TABI's standard objective threat assessment procedures. The Respondent will have notice and an opportunity to challenge the decision immediately following the removal. KCC has the authority and discretion to place an employee on administrative leave during the pendency of an investigation even where the requirements for an emergency removal are not met.

2 Scope

This Policy applies to all KCC employees and students.

3 Definitions

- A. *Actual Knowledge*: Official notice of sexual harassment or misconduct allegations to the College's Title IX Coordinator(s) or any other college official who has the authority to institute corrective measures on behalf of the college.
- B. *Advisor*: A person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- C. *Appeal Decision-maker*: Those who have decision-making authority within the appeal segment of KCC's Formal Grievance Procedure.
- D. *College*: For the purpose of this Policy, "College" shall refer to Kellogg Community College ("KCC").
- E. *Complainant*: An individual who is alleged to be the victim of conduct that could constitute Sexual Harassment or retaliation for engaging in a protected activity under this Policy.
- F. *Confidential Resource*: An employee who is not a Responsible Employee required to report sexual harassment (regardless of Clery Act Campus Security Authority status).
- G. *Day*: A business day when the college is in normal operation.
- H. *Education Program or Activity*: Locations, events, or circumstances where KCC exercises substantial control over both the Respondent and the context in which the sexual harassment occurs.
- I. *Employee*: All personnel employed by KCC including faculty, staff, and students who receive compensation in either a full- or part-time capacity. Employees who are also students would have their status in the civil rights process determined by the context of the allegations; these individuals are subject to civil rights processes as well as Student Code of Conduct and Employee Standards of Conduct.
- J. *Final Determination*: A conclusion by the preponderance of the evidence that the alleged conduct occurred and whether it did or did not violate Policy.
- K. *Finding*: A conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged.
- L. *Formal Complaint*: A document filed/signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or retaliation for engaging in a protected activity against a Respondent and requesting that KCC investigate the allegation.
- M. *Formal Grievance Procedure*: A method of formal resolution designated by KCC to address conduct that falls within the policies included below, and which complies with the requirements of Title IX regulations (34 CFR §106.45) and with 6th Circuit rulings.
- N. *Hearing Decision-maker*: An individual who has decision-making and sanctioning authority within KCC's Formal Grievance Procedure.
- O. *Investigator*: The person or persons charged by KCC with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- P. *Notice*: When an employee, student, or third party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of Sexual Harassment and/or retaliatory conduct.
- Q. *Official with Authority (OWA)*: An employee explicitly vested with the responsibility to implement corrective measures for sexual harassment, misconduct and/or retaliation on behalf of KCC.
- R. *Parties*: Both the Complainant(s) and Respondent(s), collectively.
- S. *Preponderance of the Evidence*: The standard of evidence applied in determining a violation of this Policy. Generally considered to be "more likely than not" or "the greater weight of the evidence".

- T. *Remedies*: Post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to KCC's educational program.
- U. *Respondent*: An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
- V. *Responsible Employee*: A KCC employee who is obligated by Policy to share knowledge, notice, and/or reports of sexual harassment, misconduct, and/or retaliation with the Title IX Coordinator(s).
- W. *Resolution*: The result of an informal or Formal Grievance Procedure.
- X. *Sanction*: A consequence imposed by KCC on a Respondent who is found to have violated this Policy.
- Y. *Sexual Harassment*: The umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence as set forth in Title IX regulations (34 CFR §106.30) and identified in detail in Section 5: Prohibited Conduct of this Policy.
- Z. *Sexual Misconduct*: Misconduct as defined in Section 5: Prohibited Conduct of this Policy but does not rise to the Title IX level (is not severe and/or pervasive) and, therefore, may be referred to another College Policy/procedure.
- AA. *Student*: An individual enrolled as a member of KCC in the current and/or future semester or who has been admitted to the College and is actively engaged in the enrollment process. Students who are also employees would have their status in the civil rights process determined by the context of the allegations; these individuals are subject to civil rights processes as well as Student Code of Conduct and Employee Standards of Conduct.
- BB. *Supportive Measures*: Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Parties. Such measures are designed to restore or preserve access to KCC's education program or activity, including measures designed to protect the safety of all Parties or the educational environment, and/or deter sexual harassment, misconduct, and/or retaliation. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the Parties, increased security and monitoring of certain areas of the campus or workplace, and other similar measures.
- CC. *Title IX Coordinator*: The official(s) designated by the College to ensure compliance with Title IX and the College's Title IX program. References to the Coordinator throughout this Policy may also encompass a designee of the Coordinator for specific tasks.
- DD. *Title IX Team*: The Title IX Coordinator, any deputy coordinators, and investigator(s) responsible for overseeing elements of Title IX.

4 Title IX Coordinator(s)

The Title IX Coordinator has the primary responsibility for coordinating KCC's efforts related to the intake, investigation, resolution and implementation of supportive measures to stop, remediate, and prevent sexual harassment prohibited under this Policy. When the Respondent is a student, the Dean of Student Services will serve as the Title IX Coordinator. When the Respondent is an employee, the Chief Human Resources Officer will serve as the Title IX Coordinator. Complaints, inquiries or concerns about this Policy and procedures may be made directly to the Title IX Coordinator(s), by using the following contact information:

Vicki Rivera, Chief Human Resources Officer
 Kellogg Community College
 450 North Avenue, Battle Creek, MI 49017
 Office: Whitmore Building, 101
 Email: riverav@kellogg.edu
 Phone: 269-965-4152

Terah Zaremba, Dean of Student Services
Kellogg Community College
450 North Avenue, Battle Creek, MI 49017
Office: Roll Health and Administration Building, 301
Email: zarembat@kellogg.edu
Phone: 269-565-7899

4.A Independence and Conflict of Interest

The Title IX Coordinator(s) manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator(s) oversees all resolutions under this Policy and these procedures. The members of the Title IX Team who are involved in any particular case are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator(s), Investigator(s), and Hearing Decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. The Parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another member of the Title IX Team will be assigned to fill the role, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Vice President of Student & Community Services or designee at 269-565-7899. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

5 **Prohibited Conduct**

5.A Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Michigan regard Sexual Harassment as an unlawful discriminatory practice.

KCC has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community and in compliance with Title IX regulations (34 CFR §106.30).

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex or that is sexual that satisfies one or more of the following:

5.A.1 *Quid Pro Quo*

- a. an employee of the college,
- b. conditions the provision of an aid, benefit, or service of the college,
- c. on an individual's participation in unwelcome sexual conduct.

5.A.2 *Sexual Harassment*

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to the College's education program or activity.

5.A.3 *Sexual Assault, defined as:*

5.A.3.a *Sex Offenses, Forcible*

- Any sexual act directed against another person
- without the consent of the Complainant,
- including instances in which the Complainant is incapable of giving consent.

Forcible Sexual acts include:

- a. Forcible Rape:
 - i. Penetration,
 - ii. no matter how slight,
 - iii. of the vagina or anus with any body part or object, or
 - iv. oral penetration by a sex organ of another person,
 - v. without the consent of the Complainant.
- b. Forcible Sodomy:
 - i. Oral or anal sexual intercourse with another person,
 - ii. forcibly,
 - iii. and/or against that person's will (non-consensually), or
 - iv. not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- c. Sexual Assault with an Object:
 - i. The use of an object or instrument to penetrate,
 - ii. however slightly,
 - iii. the genital or anal opening of the body of another person,
 - iv. forcibly,
 - v. and/or against that person's will (non-consensually),
 - vi. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- d. Forcible Fondling:
 - i. The touching of the private body parts of another person (buttocks, groin, breasts),
 - ii. for the purpose of sexual gratification,
 - iii. forcibly,
 - iv. and/or against that person's will (non-consensually),
 - v. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

5.A.3.b *Sex Offenses, Non-forcible*

- a. Incest:
 - i. Non-forcible sexual intercourse
 - ii. Between persons who are related to each other

- iii. Within the degrees wherein marriage is prohibited by Michigan law
- b. Statutory Rape:
 - i. Non-forcible intercourse
 - ii. With a person who is under the statutory age of consent in Michigan

5.A.4 *Dating Violence, defined as:*

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.

5.A.5 *Domestic Violence, defined as:*

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Michigan, or
- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Michigan.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

5.A.6 *Stalking, defined as:*

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. Suffer substantial emotional distress.

For the purposes of this definition—

Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

5.B Sexual Exploitation

Occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses. Examples of behavior that could rise to the level of sexual exploitation include:

- a. Prostituting another person;
- b. Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
- c. Non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
- d. Going beyond the bounds of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- e. Engaging in non-consensual voyeurism;
- f. Knowingly transmitting an STI, such as HIV, to another without disclosing your STI status;
- g. Exposing one's genitals in non-consensual circumstances, or inducing another to expose his or her genitals;
- h. Possessing, distributing, viewing or forcing others to view illegal pornography.

5.C Retaliation

It is prohibited for KCC or any member of the KCC community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or Policy, or because the individual has engaged in a protected activity. Protected activity under this Policy includes reporting an incident that may implicate this Policy, filing a Formal Complaint, participating or refusing to participate in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. KCC will take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Charges against an individual for code of conduct violations that do not involve Sexual Harassment but arise out of the same facts or circumstances as a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation. The exercise of rights protected under the First Amendment does not constitute retaliation.

6 **Standards for Assessing Conduct**

As used in the offenses above, the following definitions and understandings apply:

6.A Coercion

Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

6.B Consent

The State of Michigan does not have one single definition of consent; however the following is the definition of consent for purposes of this Policy: Consent is a clear, freely given, "yes" to sexual activity. 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. The absence of "no" is not consent. Silence, in and of itself, cannot be interpreted as consent. Similarly, a freely-given, verbalized "yes" will contribute to a mutual understanding that consent has been given and received.

- a. However, consent, whether verbal or nonverbal, which has been coerced does not constitute valid consent. To coerce consent means to gain consent through force, or threat of force. Individuals who consent to sex must be able to understand what they are doing and do so willingly.
- b. A person may not be able to give consent if: they are under the age of 16, if they are legally mentally incapable, mentally incapacitated or physically helpless. This may include impairment due to drug or alcohol use. Important reminders about consent:
 - i. Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity.
 - ii. Previous relationships or prior consent does not imply consent to future sexual acts.
 - iii. Consent may be withdrawn at any time, even during the course of sexual activity.

Consent is:

- a. knowing, and
- b. voluntary, and
- c. clear permission
- d. by word or action
- e. to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM¹ or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to Policy that assumes non-kink relationships as a default.

6.C Force

Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

6.D Incapacitation

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault Policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

¹ Bondage, discipline/dominance, submission/sadism, and masochism.

7 College Standards

7.A Duty to Report

KCC requires that all employees are considered Responsible Employees and will report to the Title IX Coordinator if they become aware of an incident that may violate this Title IX Policy. This designation is separate from an Official With Authority (“OWA”) as defined in this Policy. Determining who is an OWA is a legal determination of who is explicitly vested with responsibility to implement corrective measures on behalf of KCC. Regardless of an employee’s designation as an Official with Authority, all KCC employees are required to report any actions that may violate this Policy. Campus Security Authorities must also report violations of this Policy to KCC Public Safety.

7.B Materially False Statements

Making a materially false statement as part of a Title IX investigation is a violation of KCC’s Code of Conduct. Charging an individual 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 and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

7.C Complainant’s Expressed Desire Not to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a Formal Complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether KCC proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate risk assessment. The Title IX Coordinator’s decision will be based on results of the risk assessment that show a compelling risk to health and/or safety that requires KCC to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. KCC may be compelled to act on alleged misconduct regardless of a Complainant’s wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and KCC’s ability to pursue a Formal Grievance Process fairly and effectively. When KCC proceeds with the Formal Grievance Process, the Complainant or their Advisor may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy regardless of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

KCC’s ability to remedy and respond to notice may be limited if the Complainant does not want to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing KCC’s obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow KCC to honor that request, KCC will offer informal resolution options as discussed in the Section 8.E: Information Resolution of this Policy, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by KCC, and to have the incidents investigated and properly resolved through these procedures.

7.D Presumption and Standard of Proof

KCC operates with the presumption that the Respondent is not responsible for the alleged Sexual Harassment. This presumption exists unless and until the Respondent is determined to be responsible for a Policy violation by a preponderance of the evidence. The preponderance of the evidence standard means whether it is more likely than not that the Respondent violated the Policy as alleged.

7.E Confidentiality of Complaints and Reports

Parties in these processes, including the Complainant, the individual accused of a Policy Violation (“Respondent”), and witnesses, have privacy rights and reasonable expectations of confidentiality in the investigation of matters subject to this procedure.

In addition, the integrity of the process depends on ensuring reasonable expectations of confidentiality. The Title IX Coordinator will keep confidential the complaint, report, witness statements, and any other information provided by the Complainant, Respondent, or witnesses and will disclose this information only to the Complainant, Respondent, or witnesses, as necessary to give fair notice of the allegations and to conduct the investigation; to law enforcement consistent with state and federal law; to other College officials as necessary for coordinating interim measures or for health, welfare, and safety reasons, and to government agencies who review the College’s compliance with federal law. The investigation report will be disclosed only to the Complainant, Respondent, Title IX Coordinator, Discipline Authority as necessary, and College officials as necessary to prepare for subsequent proceedings (e.g., College President and College Legal Counsel). Information about complaints and reports, absent personally identifiable information, may be reported to College officials and external entities for statistical and analysis purposes pursuant to federal and state law and College Policy.

7.F Amnesty for Student Complainants and Student Witnesses

The KCC community encourages Complainants and witnesses to report misconduct and crimes. Sometimes, Complainants or witnesses are hesitant to report to KCC officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the KCC community that Complainants choose to report misconduct to KCC officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process. To encourage reporting and participation in the process, KCC maintains a Policy of offering parties and witnesses amnesty from minor Policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

7.G Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

7.H Resources

The College's Safety and Security Annual Report of on-campus crime statistics includes forcible and non-forcible sex offenses, in lieu of the single category of rape used on previous reports, as well as statistics on dating violence, domestic violence, and stalking, in compliance with the Campus Security Act.

Copies of the Safety and Security Annual Report (required by the Student Right-to-Know and Campus Security Act of 1990) which details on-campus crime statistics for the three previous calendar years may be obtained at the following locations:

- KCC Public Safety, located in Lane Thomas 306
- Online at: www.kellogg.edu/publicsafety

Crime prevention materials concerning personal safety on campus, rape and date or acquaintance rape are also available KCC Public Safety.

During the academic year, the College may provide sex crime prevention information through campus publications, College events/programs, and/or by direct presentations to student groups on request.

The College offers counseling services to its students. Those students needing counseling can contact the Counseling office at (269) 441-2428. Additional counseling services are also available by calling 2-1-1.

7.I Criminal Reporting

Please remember that if someone is in immediate danger or needs immediate medical attention, the first place to report is 9-1-1. You may also report to KCC Public Safety (269-965-4147), or to the Battle Creek Police Department (online at <https://www.battlecreekmi.gov/247/Police-Department> or by phone at 269-966-3322). Some forms of harassment may also be crimes. For example, sexual assault, stalking and rape are crimes. Criminal reports should be made to law enforcement, even if it is uncertain whether the particular conduct is a crime. Calling local law enforcement can help you: Obtain emergency and nonemergency medical care; get immediate law enforcement response for your protection; understand how to provide assistance in a situation that may escalate to more severe criminal behavior; arrange a meeting with victim advocate services; find counseling and support; initiate a criminal investigation; and answer questions about the criminal process.

In order to preserve any physical evidence of a sexual offense, victims of sexual assault are urged not to bathe, shower, use any feminine douche or change clothing. Such victims should go immediately (within 120 hours) to a medical facility of their choice to receive medical treatment if needed and to insure that the appropriate examinations are conducted to collect the necessary physical evidence of the assault. The cost of medical treatment or examination of the victim of a

sexual assault for physical evidence shall be charged to the political sub-division where the offense occurred (Michigan Act 223 of 1976). There is no cost to the crime victim for such medical treatment or examination in Michigan.

8 Formal Grievance Procedures

When an alleged violation of this Policy is reported, the allegations are subject to resolution under this process, where appropriate, as determined by the Title IX Coordinator(s), and as detailed below.

When the Respondent is a member of the KCC community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the KCC community. This community includes, but is not limited to, students, registered student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers and invitees. The procedures described in this Policy may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this Policy.

8.A Filing a Complaint

Complaints and notices of alleged Policy violations may be made in any of the following ways:

- a. File a complaint with, or give verbal notice to, the Title IX Coordinator(s) using the contact information in Section 4: Title IX Coordinator(s) of this Policy. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address listed for the Title IX Coordinator(s).
- b. Report online, using the reporting form posted at <http://www.kellogg.edu/reportanincident>.
- c. Anonymous reports: Anonymous reports can be made through any of the means above. Individuals who are considering making an anonymous report should be aware of the following:
 - i. The information contained in anonymous reports may give rise to a need to investigate. Without a known Complainant, KCC may be limited in its ability to obtain follow-up information and appropriately respond to the complaint.
 - ii. KCC tries to provide supportive measures to all Complainants, which is impossible with an anonymous report.
 - iii. The act of reporting carries no obligation to initiate a Formal Complaint. KCC seeks to respect Complainants' requests regarding complaints, as described further in Section 7.C: Complainant's Expressed Desire Not to Proceed of this Policy.

A Formal Complaint is a document filed and/or signed by the Complainant or signed by the Title IX Coordinator alleging a Policy violation by a Respondent and requesting that KCC investigate the allegation(s). A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in Section 4: Title IX Coordinator(s). A Formal Complaint will contain a Complainant's or the Title IX Coordinator's digital or physical signature, or otherwise indicates who is filing the Formal Complaint. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to verify their intent to file a Formal Complaint and ensure that it is filed correctly. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or party.

8.B Initial Assessment

Upon receipt of a complaint or notice to the Title IX Coordinator(s) of an alleged violation of this Title IX Policy pursuant to Section 1.B: Promptness of this Policy, KCC will initiate a prompt initial assessment to determine the appropriate next steps.

The initial assessment will involve:

- a. The Title IX Coordinator will determine if the allegations made in the complaint are appropriate to be addressed in this Policy. If the allegations are outside of the definitions and/or scope of this Policy, the Title IX Coordinator may refer the complaint to another College Policy/procedure.
- b. Title IX Coordinator determines if Complainant wishes to make a Formal Complaint, and assists them in doing so if desired.
- c. If there is no Formal Complaint filed by Complainant, Title IX Coordinator determines if there is an institutional risk to health or safety, as discussed in Section 7.C: Complainant's Expressed Desire Not to Proceed, sufficient for the Title IX Coordinator to sign the Formal Complaint.
- d. Title IX Coordinator or designee offers Supportive Measures to the Complainant and notifies them of their right to have an Advisor as part of the process.

The initial assessment will conclude in at least one of the following responses:

- a. Supportive measures as described in Section 8.C: Supportive Measures of this Policy, if the Complainant does not want to proceed formally; and/or,
- b. Proceeding with an informal resolution; and/or,
- c. Proceeding with a Formal Grievance Process, to include an investigation and a hearing, which will determine whether or not KCC's Title IX Policy has been violated. If so, KCC will promptly implement effective remedies to address the potential recurrence of the harassment or its effects.
 - i. If the Complainant wishes to proceed with a Formal Grievance Process, the Title IX Coordinator will determine if the alleged Sexual Harassment falls within the scope of the Title IX Policy.
 - ii. If it does not fall within the scope of the Title IX Policy, the Title IX Coordinator will "dismiss" the Title IX complaint, and offer other Policy options to the Complainant, including the Sexual Misconduct Policy.
 - iii. If the actions alleged fall within the scope of the Title IX Policy, the Title IX Coordinator will initiate (or designate an investigator to initiate) an investigation of whether the alleged sexual harassment violates KCC's Title IX Policy.

8.C Supportive Measures

- a. Process: KCC will offer and implement appropriate and reasonable supportive measures to the Parties upon notice of alleged sexual harassment and/or retaliation. The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the Title IX Coordinator will inform the Complainant, in writing, that they may file a formal complaint with KCC either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.
- b. Privacy: KCC will maintain the privacy of the supportive measures, provided that privacy does not impair KCC's ability to provide the supportive measures or respond appropriately to the concern. KCC will act to ensure as minimal an academic impact

on the parties as possible. KCC will implement measures in a way that does not unreasonably burden the other party.

- c. Options: Supportive measures may include, but are not limited to:
 - i. Referral to confidential resources, including counseling and other mental health services, and the Employee Assistance Program for employees, and community-based service providers
 - ii. Class schedule modifications, withdrawals, or leaves of absence
 - iii. Increased security and monitoring of certain areas of the campus
 - iv. Visa and immigration assistance
 - v. Student financial aid counseling
 - vi. Education to the community or community subgroup(s)
 - vii. Altering work arrangements for employees or student-employees
 - viii. Safety planning
 - ix. Providing campus safety escorts
 - x. Providing transportation accommodations
 - xi. Implementing contact limitations (no contact orders) between the parties
 - xii. Academic support, extensions of deadlines, or other course/program-related adjustments
 - xiii. Issuing Timely Warnings, per the Clery Act
 - xiv. Any other actions deemed appropriate by the Title IX Coordinator

8.D Dismissal of Complaint

- a. Mandatory: Dismissal of the Title IX Complaint is mandatory if at any time during the investigation or hearing, it is determined that:
 - i. The conduct alleged in the formal complaint would not constitute Sexual Harassment as defined in the Policy hereinabove, even if proved; and/or,
 - ii. The conduct did not occur in an educational program or activity controlled by KCC; and/or,
 - iii. KCC does not have control of the Respondent; and/or,
 - iv. The conduct did not occur against a person in the United States; and/or,
 - v. At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity.
- b. Discretionary: Dismissal of the Title IX Complaint is discretionary if, at any time during the investigation or hearing:
 - i. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein, though the Complainant may later request to reinstate or refile the complaint; or,
 - ii. Specific circumstances prevent KCC from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- c. Procedure for Dismissal: Upon any dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Parties. This dismissal decision is appealable by any party.
- d. Appeal of Dismissal: KCC's decision to dismiss or not to dismiss is appealable by either Party under the procedures for appeal below.

8.E Informal Resolution

KCC does not require, as a condition of any right or privilege, waiver of the right to an investigation or participation in the Formal Grievance Process. After a Formal Complaint is filed, and before making a determination regarding responsibility for a violation of this Policy, KCC may facilitate an informal resolution process that does not involve a full investigation and adjudication, if KCC:

- a. Provides to the parties a written notice disclosing:
 - i. the allegations,
 - ii. the requirements of the informal resolution process,
 - iii. the circumstances under which the parties are precluded from resuming a formal complaint arising out of the same allegations, provided 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 Formal Grievance Process.
- b. Obtains the Parties' voluntary, written consent to the informal resolution process, and
- c. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

8.F Advisors

The Parties may each have an Advisor of their choice with them for all meetings and interviews within the Formal Grievance process, if they so choose. Advisors may request to meet with the Title IX Coordinator in advance of portions of the Formal Grievance process to allow Advisors to clarify and understand their role, as well as the relevant Policies and Procedures.

- a. Witnesses as Advisors:
 - i. Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Hearing Decision-maker(s).
- b. Who can serve as Advisor:
 - i. The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of KCC. One party's choice to select an attorney to serve as their Advisor does not obligate KCC to provide an attorney for the other Party.
- c. Pool of Advisors:
 - i. If the parties do not have someone available to serve as their Advisor, the Title IX Coordinator will offer an individual from a pool of available Advisors.
- d. The Right NOT to have an Advisor:
 - i. Parties have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing. At a hearing, Parties must have an Advisor to facilitate cross-examination. If a Party does not have an Advisor for a hearing, the Title IX Coordinator or designee will appoint a trained Advisor for the limited purpose of conducting any cross-examination.
- e. Role of the Advisor:
 - i. The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors are not to interrupt the meeting and are primarily present for support and consultation with the Party. If unable to comply with expectations, Advisors may be asked to leave. Advisors may not speak on behalf of the Party they advise except during the cross-examination portion of the hearing proceeding.
- f. Expectations for Advisors:
 - i. All Advisors are subject to KCC policies and procedures, and are expected to advise their advisees without disrupting proceedings. Advisors are not present in a hearing to present statements or arguments or to facilitate direct examination. Advisees may consult with their Advisors as requested, and may do so privately as needed.
- g. Information Sharing with Advisors:

- i. Parties may share any information directly with their Advisors, to facilitate the Advisor's participation in the process. Upon request, the Title IX Coordinator can provide a consent form to authorize KCC to share information directly with the Advisor. Advisors are expected to maintain the privacy of any documentation, exhibits or other information shared with them.

8.G Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (NOIA) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice if possible of when the NOIA will be delivered to the Respondent.

- a. The Notice of Investigation and Allegations will include:
 - i. A meaningful summary of all of the allegations,
 - ii. The identity of the involved parties (if known),
 - iii. The precise misconduct being alleged,
 - iv. The date and location of the alleged incident(s) (if known),
 - v. The specific policies implicated,
 - vi. A description of the applicable procedures,
 - vii. A statement of the potential sanctions/responsive actions that could result,
 - viii. A statement that KCC presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
 - ix. A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
 - x. A statement about KCC's statement on retaliation,
 - xi. Information about the privacy of the process,
 - xii. Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
 - xiii. A statement informing the parties that the Title IX Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
 - xiv. Details on how the party may request disability accommodations during the Formal Grievance Process,
 - xv. A link or information about relevant community or college resources, including mental health resources,
 - xvi. The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
 - xvii. An instruction to preserve any evidence that is directly related to the allegations.
- b. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.
- c. The Notice of the Investigation and Allegations will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official KCC records, or emailed to the Parties' KCC-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

8.H Investigation Procedures

- a. Assigning Investigator(s):
 - i. Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints an investigator(s), who may be the Title IX Coordinator, to perform the investigation. That investigator(s) will reach out to the Parties and begin the investigation.
- b. All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available relevant evidence. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record. An investigation will typically consist of the following steps:
 - i. Determine the identity and contact information of the Complainant.
 - ii. Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated.
 - iii. Ensure that a prompt initial assessment is conducted to determine if the allegations indicate a potential Policy violation.
 - iv. Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and anticipated order of interviews for all witnesses and the parties.
 - v. Notify all Parties of their right to have an Advisor of their choosing for all meetings attended by that Party.
 - vi. Meet with the Complainant to finalize their interview/statement, if necessary.
 - vii. Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations.
 - viii. Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings.
 - ix. Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible.
 - x. When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose.
 - xi. Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
 - xii. Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
 - xiii. Complete the investigation promptly and without unreasonable deviation from the intended timeline.
 - xiv. Provide regular status updates to the parties throughout the investigation.
 - xv. Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used in the investigation report.
 - xvi. Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence.
 - xvii. Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported Sexual Harassment, including evidence upon which KCC does not intend to rely in reaching a determination. Provide a ten (10) business

- day review and comment period so that each party may meaningfully respond to the evidence. The Parties may elect to waive the full ten days.
- xviii. The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses.
 - xix. The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report.
 - xx. The Investigator(s) should document all rationales for any changes made after the review and comment period. The Investigator(s) shares the report with the Title IX Coordinator, if other than the investigator, and/or legal counsel for their review and feedback.
 - xxi. The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

8.I Title IX Hearing Scheduling

If the complaint is not resolved through Informal Resolution, the Title IX Coordinator should schedule a hearing, which shall proceed as follows:

- a. The hearing shall be scheduled not less than ten (10) business days from the date the final investigation report is transmitted to the Parties and the Hearing Decision-maker, unless all Parties and the Hearing Decision-maker agree to an expedited timeline.
- b. The Title IX Coordinator will select an appropriate Hearing Decision-maker. None of the Hearing Decision-makers may be Advisors, Investigators, or the Title IX Coordinator.
- c. The hearing will begin at a time arranged by the Hearing Decision-maker and the Title IX Coordinator.
- d. The Title IX Coordinator or the Hearing Decision-maker will send notice of the hearing to the Parties not less than ten (10) business days before the hearing is scheduled to be held. Once mailed, emailed, and/or received in person, notice will be presumptively delivered. The notice of hearing will contain:
 - i. A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
 - ii. The time, date, and location of the hearing.
 - iii. Any technology that will be used to facilitate the hearing.
 - iv. Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Hearing Decision-maker(s) and Parties to see and hear a party or witness answering questions. Such a request must be raised if possible with the Title IX Coordinator at least five (5) business days prior to the hearing.
 - v. A list of all those who will attend the hearing, along with an invitation to object to any Hearing Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
 - vi. Information on how the hearing will be recorded and on access to the recording for the Parties after the hearing.
 - vii. A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Hearing Decision-maker may reschedule the hearing.

- viii. Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any cross-examination questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the Title IX Coordinator will appoint one. Each party must have an Advisor present for the purpose of cross-examination.
- ix. A copy of all the materials provided to the Hearing Decision-maker(s) about the matter, unless they have been provided already.
- x. An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least five (5) business days prior to the hearing if possible.

8.J Title IX Hearing Proceedings

- a. Evidentiary Considerations: Any evidence that the Hearing Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider:
 - i. incidents not directly related to the possible violation, unless they evidence a pattern;
 - ii. the character of the parties; or
 - iii. questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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.
- b. Relevance Considerations: All questions are subject to a relevance determination by the Hearing Decision-maker. The Advisor will present the proposed question, the proceeding will pause to allow the Hearing Decision-maker to consider it. The Hearing Decision-maker will determine whether the question will be permitted, disallowed, or rephrased. The Hearing Decision-maker may explore arguments regarding relevance with the Advisors, if the Hearing Decision-maker so chooses. The Hearing Decision-maker will then state their decision on the question for the record and advise the party/witness to whom the question was directed accordingly. The Hearing Decision-maker will explain any decision to exclude a question as not relevant, or request to reframe it for relevance.
- c. The Hearing Decision-maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Hearing Decision-maker has final say on all questions and determinations of relevance, subject to any appeal; the Hearing Decision-maker may consult with legal counsel on any questions of admissibility. The Hearing Decision-maker may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Hearing Decision-maker has ruled on a question.
- d. Procedures: At the hearing, the Hearing Decision-maker(s) has the authority to hear and make determinations on all allegations of Sexual Harassment and/or retaliation and may also hear and make determinations on any additional alleged Policy violations that have occurred in connection with the Sexual Harassment and/or retaliation, even though they may not have occurred under this Policy. The Hearing Decision-maker will answer all questions of procedure.
- e. Introduction of Investigation Report at Hearing: Upon request by the Hearing Decision-maker, the Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to

questioning by the Hearing Decision-maker(s) and the parties (through their Advisors). The Investigator(s) may be present during the entire hearing process, but not during deliberations. Neither the parties nor the Hearing Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Hearing Decision-maker will direct that it be disregarded.

- f. Testimony at Hearing: Once the Investigator(s) present their report and are questioned, the Parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Hearing Decision-maker and set forth in the Hearing Procedures. The Parties/witnesses will submit to questioning by the Hearing Decision-maker(s) and then by the parties through their Advisors, which is the cross-examination.
- g. Refusal to submit to cross-examination at hearing: If a party or witness does not submit to cross-examination at the live hearing, the Hearing Decision-maker may afford the prior statements of that party limited weight and/or may be limited in whether they can rely on any statement of that party or witness in reaching a determination regarding responsibility.
- h. Deliberation: The Hearing Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the Policy violation(s) in question.
- i. Decision: After post-hearing deliberation, the Hearing Decision-maker renders a determination based on the preponderance of the evidence (whether it is more likely than not that the Respondent violated the Policy as alleged). The Hearing Decision-maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, and credibility assessments.
- j. Sanctioning decision: After conclusion of the hearing portion of the proceeding, if there is a finding that the alleged conduct occurred and a final determination that the Title IX Policy was violated, the Title IX Coordinator will proceed to make a sanctioning decision. Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. The parties may each submit a written impact statement prior to the hearing for the consideration at the sanction stage of the process when a determination of responsibility is reached.
- k. Sanction Considerations: Appropriate considerations in determining sanction include:
 - i. The nature, severity of, and circumstances surrounding the violation(s) and the impact on the Parties;
 - ii. The Respondent's disciplinary history;
 - iii. Previous allegations or allegations involving similar conduct;
 - iv. The need for sanctions/responsive actions to bring an end to the Sexual Harassment;
 - v. The need for sanctions/responsive actions to prevent the future recurrence of the Sexual Harassment; and
 - vi. The need to remedy the effects of the Sexual Harassment and/or retaliation on the Complainant and the community.

8.K Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Hearing Decision-maker to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors, as requested, simultaneously.

- a. Delivery of Notice: Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official KCC records, or emailed to the parties' KCC-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.
- b. Contents of Notice: The Notice of Outcome will identify the specific Policy(ies) reported to have been violated, including the relevant Policy section, and will contain a description of the procedural steps taken by KCC from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held. The Notice of Outcome will specify the finding on each alleged Policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant Policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent KCC is permitted to share such information under law; any sanctions issued which KCC is permitted to share according to law; and any remedies provided to the Complainant designed to ensure access to KCC's educational or employment program or activity, to the extent KCC is permitted to share such information under law. The Notice will also include available appeal options.

8.L Sanctions

- a. For student Respondents: Sanctions for students can include, but are not limited to:
 - i. a verbal or written warning;
 - ii. probation;
 - iii. establishment of mandatory behavior conditions;
 - iv. recommendations for counseling;
 - v. permanent removal from a course or academic program;
 - vi. loss of access to college computers and/or network;
 - vii. specific project designed to assist the student in better understanding the overall impact of the behavior;
 - viii. restitution of damages/stolen property;
 - x. suspension without pay from his or her on campus job;
 - xi. prohibit participation in extracurricular activities or interscholastic or leadership positions;
 - xiii. community service;
 - xiv. withholding degree;
 - xv. suspension; and/or
 - xvi. expulsion.
- b. For employee Respondents: Sanctions for employees can include, but are not limited to:
 - i. a verbal or written warning;
 - ii. a Performance Improvement Plan;
 - iii. recommendations for counseling;
 - iv. additional training or educational requirements;
 - v. demotion;
 - vi. removal of responsibilities or leadership roles,
 - vii. suspension; and/or
 - viii. termination.

8.M Withdrawal or Resignation While Charges are Pending

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent withdraw permanently from KCC, the Formal Grievance Process per the Title IX Policy ends, as KCC no

longer has disciplinary jurisdiction over the withdrawn student. A hold will be placed on the student's ability to return, pending resolution of the process. KCC will continue to address and remedy any systemic issues, ongoing effects of the alleged Sexual Harassment, etc.

Should an employee Respondent resign with unresolved allegations pending, the Formal Grievance process per the Title IX Policy ends, as KCC no longer has disciplinary jurisdiction over the resigned employee. The employee may no longer be eligible for rehire, absent appropriate resolution of the Formal Grievance Process. KCC will continue to address and remedy any systemic issues, ongoing effects of the alleged Sexual Harassment, etc.

8.N Appeals

- a. Request for Appeal: Any party may request an appeal, which must be submitted in writing to the Appeal Decision-maker within 5 days of the delivery of the Notice of Outcome. The Appeal Decision-maker is the Vice President for Student & Community Services for students and an external Appeal Decision-maker for employees (separate from the Hearing Decision-maker). For student respondents, the Request for Appeal will be reviewed initially by the Vice President for Student & Community Services. For employee respondents, the Request for Appeal will be submitted to the Title IX Coordinator, who may consult with General Counsel and determine if the request meets the grounds for appeal and is timely filed. If so the Title IX Coordinator will then forward it to an external Appeal Decision-maker. Utilizing the appeals process does not prohibit a unionized employee from using the grievance process at the conclusion of the appeal.
- b. Grounds for Appeal: One or more of the following grounds must be identified and explained in the Request for Appeal:
 - i. 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; and
 - iii. The Title IX Coordinator, Investigator(s), or Decision-maker(s) 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.
- c. Response to Appeal: If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Decision-maker will notify the Parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or Hearing Decision-maker(s). The Parties will be given five (5) business days to submit a written response to the appeal. All responses will be forward to the other Parties for review and comment. The non-appealing party may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Decision-maker and either denied or approved. If approved, it will be forwarded to the other Parties, who will have the opportunity to submit a written response within five (5) business days.
- d. Notice of Appeal Outcome: The Notice of Appeal Outcome will be sent to all parties simultaneously by the Appeal Decision-maker. This Notice will include the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which KCC is permitted to share according to law, and the rationale supporting the essential findings to the extent KCC is permitted to share under state or federal law. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' KCC-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

- e. Sanction/discipline status during Appeal: Student sanctions or employee discipline are stayed during the appeal process. Supportive measures may continue or be put in place at this time.

8.O Recordkeeping

KCC will maintain records of the complaints, policies and processes set forth in this Title IX Policy pursuant to institutional and legal requirements.

9 **Forms**

- a. Report an Incident form located online at www.kellogg.edu/reportanincident.
- b. Title IX Formal Complaint Form
- c. Title IX Informal Resolution Request and Consent Form

10 **Roles and Responsibilities**

- a. In addition to the responsibilities outlined in Section 4: Title IX Coordinator(s) of this Policy, the Title IX Coordinator(s) are responsible for keeping abreast of federal requirement as it pertains to Title IX Regulations. As such, the Title IX Coordinator(s) are also responsible for editing this Policy in accordance with federal compliance and bringing necessary Policy changes forth through the College's formal Policy approval process. It is the responsibility of the Title IX Coordinator(s) that the formal grievance procedures as outlined in Section 8: Formal Grievance Procedures of this Policy are followed appropriately and within the federal regulations. Title IX Coordinator(s) must notify employees of their status as a Confidential Resource, Responsible Employee, Official With Authority, and/or member of the Title IX Team as defined in the Section 3: Definitions of this Policy.
- b. As outlined in Section 7.A: Duty to Report of this Policy, Responsible Employees and Officials With Authority are required to report alleged violations of this Policy and may do so as described in Section 8.A: Filing a Complaint of this Policy.

11 **Persons/Departments Affected**

- a. All employees and students

12 **Related Policies**

- OP 12.001 Employee Standards of Conduct
- OP 30.001 Student Code of Conduct

13 **Authoritative References**

- United States Department of Education, Office of Civil Rights
- Michigan Department of Civil Rights
- 6th Circuit Court
- Federal Law
- State Law

14 **Right To Change Policy**

The College reserves the right to interpret, change, modify, amend, or rescind this Policy, in whole or in part, at any time, without prior notice.

15 Approval Date

September 15, 2021

16 Past Revisions

August 15, 2018

August 19, 2020