



## Operating Policy and Procedure

**OP 30.003** Title IX Non-Discrimination Policy and Grievance Procedures for Complaints of Sex-Based Harassment Involving Students

**DATE:** Effective August 1, 2024

**PURPOSE:** In compliance with 2024 Title IX federal regulations, the purpose of this policy is to establish community standards regarding sex-based harassment.

**REVIEW:** This OP will be reviewed in July of each year by the Title IX Coordinators or when federal regulations require review.

Kellogg Community College (“KCC” of the “College”) does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admissions and employment. KCC has adopted Title IX grievance procedures that implement this Policy and that provide for the prompt and equitable resolution of Complaints made by students, employees, or other individuals who are participating or attempting to participate in the College’s education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations,

The grievance procedures in this Policy address complaints of sex-based harassment that involve a student party. Complaints of other forms of sex discrimination involving students will be addressed under the College’s Title IX Non-Discrimination Policy and Grievance Procedures for Complaints of Sex Discrimination (Not Sex-Based Harassment) By Students. Complaints of sex discrimination, including sex-based harassment, where a student is not a party will be addressed under the College’s Title IX Non-Discrimination Policy and Grievance Procedures for Complaints of Sex Discrimination by Employees and Others.

### SEX-BASED HARASSMENT COVERED BY THIS POLICY

KCC prohibits Sex Discrimination in all programs and activities that the College operates. Sex-based harassment is a form of sex discrimination, which means harassment on the basis of sex – including harassment on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity – that falls within one of the following categories:

1. *Quid pro quo harassment.* An employee, agent, or other person with authority to provide an aid, benefit, or service under the College’s education program or activity explicitly or impliedly conditions the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct;
2. *Hostile environment harassment.* Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive, and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the College’s education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- a. The degree to which the conduct affected the complainant's ability to access the College's education program or activity;
  - b. The type, frequency, and duration of the conduct;
  - c. The parties' ages, roles within the College's education program or activity, previous
  - d. interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
  - e. The location of the conduct and the context in which the conduct occurred; and
  - f. Other sex-based harassment in the College's education program or activity; or
3. Specific offenses, including:
- a. Sexual Assault
  - b. Dating or Domestic Violence
  - c. Stalking

Sex discrimination, including sex-based harassment, is covered by this Policy when it occurs under the College's education program or activity in the United States. This includes Conduct that occurs in a building owned or controlled by a student organization that is officially recognized by KCC and conduct that is subject to the College's disciplinary authority. The College will address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the College's education program or activity.

## **REPORTING AND RESPONSE PROCEDURES**

### **1. Reporting Concerns about Conduct That May Be Sex Discrimination.**

KCC encourages anyone who believes that they have been subjected to Sex Discrimination (or has knowledge of another person being subjected to Sex Discrimination) in connection with the School's programs or activities to promptly report their concerns to the College. The nature of the College's response will depend upon whether the report is made to a "confidential employee" or another College employee.

- a. **Reports to a "Confidential Employee."** Reports made to a "confidential employee" will not be shared with the Title IX Coordinator or other school officials. Nor will the report be shared with other individuals without express permission of the reporting person or the person about whom the report pertains, unless required by law. After receiving a report about conduct that may reasonably constitute sex discrimination, the confidential employee will share information with the reporting person about Title IX and its regulations, including the confidential employee's status, how to contact the Title IX Coordinator, how to make a complaint, and how to obtain additional information about possible supportive measures and options for resolution.
  - i. Licensed KCC Counselors are hired to provide counseling services to students only; therefore, they are "confidential employees" for students only. They may be contacted: 450 North Avenue, Battle Creek, MI 49017, (269) 441-2428, [counseling@kellogg.edu](mailto:counseling@kellogg.edu).

- ii. Confidential Employees must be acting within the scope of the duties to which the privilege or confidentiality applies to be covered by this part. If a Confidential Employee hears of conduct that may reasonably constitute Sex Discrimination while acting in a different capacity (e.g., coach, faculty member), they must report pursuant to either Paragraph I.B or I.C, as applicable.
- b. **Reports to College Employees with Authority to Institute Corrective Measures or Responsibility for Leadership, Teaching or Advising.** If a non-Confidential Employee who has authority to institute corrective measures on behalf of KCC or who has responsibility for administrative leadership, teaching, or advising, receives information about conduct that may reasonably constitute Sex Discrimination, that person must report that information to the Title IX Coordinator.
  - c. **Reports to All Other College Employees.** All other employees not covered by the paragraphs I.A or I.B may either notify the Title IX Coordinator or provide the contact information of the Title IX Coordinator and information about how to make a Complaint to any person who informs that employee about conduct that may reasonably constitute Sex Discrimination.
  - d. **Reports to the Title IX Coordinator.** When the Title IX Coordinator receives a report about conduct that may reasonably constitute sex discrimination, the Title IX Coordinator will be responsible for coordinating the College's response in a fair and equitable manner, consistent with Title IX and its regulations.

The College's Title IX Coordinators are: **Chief Human Resources** and **Dean of Student Services**. They may be reached at:

**Brooke Kolodzieczyk, Chief Human Resources Officer**

Kellogg Community College  
 450 North Avenue, Battle Creek, MI 49017  
 Office: Whitmore Building, 101  
 Email: [kolodzieczyk@kellogg.edu](mailto:kolodzieczyk@kellogg.edu)  
 Phone: 269-965-4152

**Nathan Venske, Dean of Student Services**

Kellogg Community College  
 450 North Avenue, Battle Creek, MI 49017  
 Office: Roll Health and Administration Building, 301  
 Email: [venske@kellogg.edu](mailto:venske@kellogg.edu)  
 Phone: 269-965-7899

- e. **Other Reporting Obligations.** Reports of conduct that may constitute sexual harassment may trigger other reporting obligations of the College, even when reports are made to a Confidential Employee. This may include the following:
  - i. **Board of Trustees.** Pursuant to Michigan statute, the Title IX Coordinator is required to share aggregated, non-personally identifiable information regarding the scope and frequency of behaviors covered by this Policy with the Board of Trustees.
  - ii. **Clery Act.** Pursuant to the Clery Act, Campus Security Authorities (CSAs) must report information regarding campus crimes to KCC Public Safety for record-keeping purposes. This information may be de-identified to protect privacy. In doing so, CSAs will not share personally identifying information without the permission of the person disclosing the information or about whom the information pertains.

- iii. **Grant Reporting.** To comply with the requirements of federal granting agencies, upon receiving information about certain conduct that may reasonably constitute Sex Discrimination, the Title IX Coordinator must provide the Institutional Research with an employee Respondent's name, department, and college, so Institutional Research may review whether the Respondent is eligible to serve as a Principal Investigator (PI) or co-PI. Human Resources will inform the Respondent of this disclosure to Institutional Research as required by its reporting procedures.
- iv. **Child Protection Law.** When an employee with mandatory reporting obligations under Michigan's Child Protection Law (e.g. counselors, instructors, administrators) receives information about suspected abuse of a minor by a person responsible for the child's health or welfare (e.g., parent/guardian, clergy member, teacher), the employee must notify child protective services.

**2. The College's Response to Reports About Conduct That May Reasonably Constitute Sex Discrimination.**

- a. **The Title IX Coordinator's Initial Response.** When the Title IX Coordinator becomes aware of conduct that may reasonably constitute sex discrimination, the Title IX Coordinator will take the following actions:
  - i. Provide the "complainant" (i.e., the person who is alleged to have been subjected to sex discrimination) or the person who made the report, if the complainant's identity is unknown, with information about the Title IX process and possible options for resolution, including:
    - 1) The availability of "supportive measures" for complainant, as described below;
    - 2) The right to make a "Complaint" that would trigger the College's grievance procedure, which is an oral or written request that could objectively be understood as a request for the College to investigate and make a determination about alleged sex discrimination;
    - 3) The option for informal resolution, if available and as described below;
  - ii. If a Complaint is made, provide the "respondent" (i.e., the person who is alleged to have violated the College's prohibition on sex discrimination) or the respondent's parent, guardian or legal representative, with information about the Title IX process and possible options for resolution, including:
    - 1) The availability of "supportive measures" for respondent, as described below.
    - 2) The grievance procedures;
    - 3) The option for informal resolution, if available and as described below.
  - iii. If a report made to the Title IX Coordinator does not trigger the grievance procedures (e.g., no complaint was made, the complaint allegations were withdrawn, no informal resolution process was elected), the Title IX Coordinator will determine whether to initiate a complaint that will trigger the grievance procedures. In making this determination, the Title IX Coordinator will consider multiple factors, including the complainant's wishes; the complainant's reasonable safety concerns; the risk of additional acts of sex discrimination if the grievance procedures are not initiated; the severity and scope of the allegations of sex discrimination; the age and relationship of the parties; the availability of evidence; and

whether the College could end the alleged sex discrimination and prevent its recurrence without initiating the grievance procedures.

- 1) If the Title IX Coordinator initiates the complaint and grievance procedures, the Title IX Coordinator will first notify the complainant and address reasonable concerns about the safety of complainant or others, including by providing supportive measures.

b. **Supportive Measures, Emergency Removal and Administrative Leave.** The Title IX Coordinator will be responsible for coordinating supportive measures and removals.

i. *Supportive Measures.* “Supportive measures” are supports that the College may provide, as appropriate, to restore or preserve the complainant’s and respondent’s access to KCC’s education program or activity. Supportive measures may be available to the complainant even if the complainant does not make a Complaint that triggers the grievance process. Supportive measures may be available to the respondent if either the grievance procedures have been triggered or informal resolution process has been offered.

- 1) Supportive measures may include, but are not limited to counseling, extensions of deadlines and other course-related adjustments; campus escort services; increased security or monitoring of certain areas of campus; restrictions on contact; leaves of absence; changes in class, work, housing, or other extracurricular or any other activity, and training and education programs related to sexual harassment. Supportive measures are not disciplinary or punitive, and may not unreasonably burden either party.
- 2) If a party disagrees with a decision to provide, deny, modify or terminate supportive measures applicable to them, the party may submit a written request to the Title IX Coordinator challenging the decision. The Title IX Coordinator will designate an impartial employee (other than the person who made the initial decision) to evaluate the party’s challenge and decide whether to modify or reverse the decision. The impartial employee’s decision is final, except that a party may seek additional modification or termination of supportive measures applicable to them if circumstances change materially.
- 3) Supportive measures may be available, as appropriate, through any grievance procedure or informal resolution process; following resolution, supportive measures may terminate or remain in place.
- 4) Supportive measures offered to the parties are confidential and may not be disclosed, except as necessary to provide the supportive measure or restore or preserve a party’s access to the College’s education program or activity.

ii. *Emergency Removals.* Removal of a student-respondent from the College’s education program or activity is only permitted on an emergency basis, and may only occur after the College undertakes an individualized safety and risk analysis, and determines that an imminent and serious threat to the health and safety of a complainant or others arising from the allegations of sex discrimination justifies removal. If the College determines that an emergency removal is justified, the College must provide notice to the respondent and an opportunity to challenge the decision immediately following the removal. Any such challenge should be submitted to the Title IX Coordinator, who will be responsible for designating an impartial employee (other than the employee who made the initial decision) to evaluate and make a decision on the respondent’s challenge.

- iii. *Administrative Leave.* The College may place an employee-respondent on administrative leave pending completion of the grievance procedures.

### **3. Complaints of Sex Discrimination Triggering the Grievance Procedures.**

An oral or written request that could objectively be understood as a request for the College to investigate and make a determination about alleged sex discrimination is considered a “Complaint” that triggers the Title IX grievance procedures.

- a. **Persons Who May Make a Complaint of Sexual Harassment:** The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that KCC investigate and make a determination about alleged discrimination under Title IX:
  - i. A Complainant;
  - ii. A parent, guardian, or other authorized legal representative who has the legal right to act on behalf of a Complainant; or
  - iii. The College’s Title IX Coordinator.

## **GRIEVANCE PROCEDURES**

### **1. Basic Requirements.**

KCC will treat Complainants and Respondents equitably. The Title IX Coordinator, investigator, or decisionmaker may not have a conflict of interest or bias for or against Complainants or Respondents, generally, or for or against an individual Complainant or Respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator.

KCC presumes that the Respondent is not responsible for the alleged Sex Discrimination until a determination is made at the conclusion of its grievance procedures.

KCC has established the following timeframes for the major stages of the grievance procedures:

- a. *Evaluation:* Within five calendar days of receiving a Complaint, the Title IX Coordinator will evaluate the Complaint to determine whether it should be dismissed or investigated.
- b. *Investigation:* Within forty-five calendar days of receiving a Complaint, the investigation will be completed.
- c. *Determination:* Within sixty calendar days of receiving a Complaint, a determination will be issued.
- d. *Appeal:* Within five calendar days after a determination is issued, parties may submit a written appeal as set forth in the Appeal of Determination section, below. The other party will be allowed five calendar days to respond. A decision will be made on the appeal within ten calendar days after the appeal is received.

If it determines that reasonable cause for extension exists, KCC may extend these timeframes on a case-by-case basis for good cause by providing notice to the parties that includes the reason for the delay. KCC will notify the Parties of the extension via KCC email.

KCC will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties shall not engage in retaliation, including against witnesses.

KCC will objectively evaluate all evidence that is relevant and not otherwise impermissible: including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by KCC to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- a. Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- b. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless KCC obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
  - i. Medical and counseling records of a Complainant or Respondent are privileged, confidential records that individuals are not required to disclose. However, these records may contain information that is related and material to the Complainant. During the Grievance Process, a Party may voluntarily choose to share such records with the investigator. Any records provided by a Party become part of the file, and any relevant information will be made available for review by the other Party and their Advisor, if applicable. All participants in the Grievance Process agree to keep any such information confidential unless its disclosure during the hearing or hearing preparation is necessary to make a good faith argument in support of their position.
- c. For Sex-based Harassment Complaints, evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to alleged Sex-based Harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to alleged Sex-based Harassment or preclude determination that Sex-based Harassment occurred.

To determine whether and how these procedures apply to a party who is both a student and an employee, KCC will conduct a fact-specific review to determine the individual's primary relationship with the College. At a minimum, KCC will consider the whether the party's primary relationship with KCC is to receive an education and whether the alleged Sex-based Harassment occurred while the party was performing employment- related work.

## **2. Written Notice of Allegations.**

Upon initiation of KCC's Title IX grievance procedures, and with sufficient time for the parties to prepare a response before any initial interview, KCC will notify the parties of the following:

- a. KCC's Title IX grievance procedures and any informal resolution process;
- b. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute Sex Discrimination and the date(s) and location(s) of the alleged incident(s);
- c. Retaliation is prohibited;
- d. The parties are entitled to an equal opportunity to access the relevant and not otherwise permissible evidence or an accurate description of the evidence. If the College provides a description of the evidence, the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

If, in the course of an investigation, KCC decides to investigate additional allegations of Sex Discrimination by the Respondent toward the Complainant that are not included in the notice provided or that are included in a Complaint that is consolidated, KCC will notify the parties of the additional allegations.

### **3. Dismissal of a Complaint**

- a. KCC may dismiss a Complaint of Sex Discrimination if:
  - i. KCC is unable to identify the Respondent after taking reasonable steps to do so;
  - ii. The Respondent is not participating in KCC's education program or activity and is not employed by KCC;
  - iii. KCC obtains the Complainant's voluntary withdrawal in writing of any or all of the allegations, the Title IX Coordinator declines to initiate a Complaint, and KCC determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute Sex Discrimination under Title IX even if proven; or
  - iv. KCC determines the conduct alleged in the Complaint, even if proven, would not constitute Sex Discrimination under Title IX.
  - v. Before dismissing a Complaint, KCC will make reasonable efforts to clarify the allegations with the Complainant.
  - vi. Upon dismissal, KCC will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then KCC will notify the parties simultaneously in writing.
  - vii. KCC will notify the Complainant that a dismissal may be appealed on the basis outlined in the Appeals section of these procedures. If dismissal occurs after the Respondent has been notified of the allegations, then KCC will also notify the Respondent that the dismissal may be appealed on the same basis. If a dismissal is appealed, KCC will follow the procedures outlined in the Appeals section.
- b. When a Complaint is dismissed, KCC will, at a minimum:
  - i. Offer supportive measures to the Complainant as appropriate;



- ii. If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
- iii. Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that Sex Discrimination does not continue or recur within KCC's education program or activity.

#### 4. **Investigation.**

KCC will provide for adequate, reliable, and impartial investigation of complaints.

The burden is on KCC—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

KCC will provide to a party whose participation is invited or expected, and with sufficient time for the party to prepare to participate, written notice of the date, time, location, participants, and purpose of all meetings or proceedings.

Advisors. If Credibility is at issue, KCC will provide each party with the same opportunity to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.

- a. KCC will not limit the choice or presence of the advisor for the Complainant or Respondent in any meeting or proceeding.
- b. KCC may establish restrictions regarding the extent to which the advisor may participate in these grievance procedures, as long as the restrictions apply equally to the parties.

KCC will provide the parties with the same opportunities, if any, to have people other than the advisor of the parties' choice present during any meeting or proceeding.

Witnesses and Evidence. KCC will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.

Relevance. The decisionmaker will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

KCC will provide each party and the party's advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of Sex-based Harassment, and not otherwise impermissible, in the following manner:

KCC will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or the same written investigative report that accurately summarizes this evidence. If KCC provides access to an investigative report, KCC will further provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

KCC will provide a reasonable opportunity to review and respond to the evidence or the investigative report. If KCC conducts a live hearing as part of its grievance procedures, it will provide this opportunity to review the evidence in advance of the live hearing; and

KCC will take reasonable steps to prevent and address the parties' and their advisors', if applicable, unauthorized disclosure of information and evidence obtained solely through these grievance procedures.

## **5. Questioning the Parties and Witnesses.**

KCC will provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment.

### **a. Live Hearings**

- i. In investigations involving student-respondents where credibility is in dispute and relevant to evaluating one or more allegations of Sex-based Harassment, KCC will conduct a live hearing so the decisionmaker may question parties and witnesses in order to adequately assess a party's or witness's credibility.
- ii. KCC's process for proposing and asking relevant, not otherwise impermissible questions of parties and witnesses, including questions challenging credibility, will:
- iii. Allow the decisionmaker to ask such questions, and
- iv. Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the decisionmaker, subject to the procedures for evaluating and limiting questions discussed below.
- v. KCC will conduct the live hearing with the parties physically present in the same geographic location or, at KCC's discretion or upon the request of either party, will conduct the live hearing with the parties physically present in separate locations with technology enabling the decisionmaker and parties to simultaneously see and hear the party or witness while that person is speaking.
- vi. KCC will create an audio or audiovisual recording or transcript of any live hearing and make it available to the parties for inspection and review.

### **b. Questioning Outside of Live Hearings.**

- i. When a live hearing is not required, the College's process for proposing and asking relevant (and not otherwise impermissible) questions and follow-up questions of parties and witnesses, including questions challenging credibility, will:
- ii. Allow the investigator or decisionmaker to ask such questions during individual meetings with a party or witness;
- iii. Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the investigator or decisionmaker during one or more individual meetings, including follow-up meetings, with a party or witness, subject to the procedures for evaluating and limiting questions discussed below; and
- iv. Provide each party with an audio or audiovisual recording or transcript with enough time for the party to have a reasonable opportunity to propose follow-up questions.

### **c. Procedures for the Decisionmaker to Evaluate Questions and Limitations on Questions.**

The decisionmaker will determine whether a proposed question is relevant and not otherwise impermissible before the question is posed and will explain any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The decisionmaker will give a party an opportunity to clarify or revise a question that the decisionmaker determines is unclear or harassing. If the party sufficiently clarifies or revises the question, the question will be asked.

- d. Impact of Refusal to Respond to Questions and Inferences Based on Refusal to Respond to Questions.

The decisionmaker may choose to place less or no weight upon statements by a party or witness who refuses to respond to relevant, permissible questions. The decisionmaker will not draw an inference about whether Sex Discrimination or Sex-based Harassment occurred based solely on a party's or witness's refusal to respond to such questions.

## **6. Determination Whether Sex Discrimination Occurred.**

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, KCC will:

- a. Use the preponderance of the evidence standard of proof to determine whether Sex Discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant, permissible evidence for its persuasiveness. If the decisionmaker is not persuaded by the evidence, under the applicable standard, that Sex Discrimination occurred, whatever the quantity of the evidence, the decisionmaker will not determine that Sex Discrimination occurred;
- b. Notify the parties simultaneously, in writing, of the decisionmaker's determination, including:
  - i. A description of the alleged Sex Discrimination;
  - ii. Information about the policies and procedures that KCC used to evaluate the allegations;
  - iii. The decisionmaker's evaluation of the relevant and not otherwise impermissible evidence and determination whether Sex Discrimination occurred;
  - iv. When the decisionmaker finds that Sex Discrimination occurred, set forth any disciplinary sanctions KCC will impose on the Respondent and state whether remedies other than the imposition of disciplinary sanctions will be provided by KCC to the Complainant, and, if applicable, to other students identified by KCC to be experiencing the effects of the Sex Discrimination; and
  - v. The College's procedures and permissible bases for the Complainant and Respondent to appeal.
- c. Not impose discipline on a respondent for Sex Discrimination prohibited by Title IX unless there is a determination at the conclusion of the Title IX grievance procedures that the Respondent engaged in prohibited Sex Discrimination.
- d. If there is a determination that Sex Discrimination occurred, as appropriate, the Title IX Coordinator will:

- i. Coordinate the provision and implementation of remedies to a Complainant and other people KCC identifies as having had equal access to KCC's education program or activity limited or denied by Sex Discrimination;
  - ii. Coordinate the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions; and
  - iii. Take other appropriate prompt and effective steps to ensure that Sex Discrimination does not continue or recur within KCC's education program or activity.
- e. Comply with the Title IX grievance procedures before the imposition of any disciplinary sanctions against a Respondent; and
  - f. Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the final determination whether Sex Discrimination occurred. College may address false statements by initiating a disciplinary process under the Code of Conduct or other relevant policies if there is evidence independent of the determination whether Sex Discrimination occurred.

## **7. Disciplinary Sanctions and Remedies.**

Following a determination that sex-based harassment occurred, KCC may impose disciplinary sanctions, which may include discipline ranging from a verbal warning up to and including expulsion, termination of employment, or exclusion from the College's programs and activities.

KCC may also provide remedies, which may include ensuring that a complainant can move safely between classes and while at school or on campus such as by providing a campus escort or allowing a student to park in the teachers' parking lot; making changes to housing, class schedules and extracurricular activities to ensure the complainant and respondent are separated; providing services, including medical support and counseling; providing academic resources and support; reviewing any disciplinary actions taken against the complainant to determine whether there is a causal connection between the sex-based harassment and the misconduct; providing reimbursement for professional counseling services; making tuition adjustments; and any other remedies the College deems appropriate.

## **8. Appeal of Determination.**

KCC offers the following process for appeals from a determination whether sex discrimination occurred:

- a. The responding and reporting party(s) have five (5) business days from receipt of the determination to request an appeal of the determination. Third-party reporters do not have appeal rights.
- b. The original determination(s) and sanction(s) will stand if the appeal request is not timely or substantively eligible, and that decision is final.
- c. During an appeal, the sanction(s) imposed will remain in effect.
- d. The party requesting an appeal must show clear error as to the original finding and/ or a compelling justification to modify a sanction, as both the determination(s) and sanction(s) are presumed to have been decided reasonably and appropriately. All appeal requests must be made in writing to the Vice President of Student Affairs (or designee) with the Title IX Coordinator carbon copied and must be based on one of the following elements:

- i. A procedural or substantive error occurred that significantly impacted the outcome of the investigation (e.g. substantiated bias, material deviation from established procedures, etc);
  - ii. To consider new evidence, unavailable during the original hearing and/or investigation, that could substantially impact the original determination(s) and sanction(s). A summary of this new evidence and its potential impact must be included; or
  - iii. The sanctions imposed are substantially disproportionate to the severity of the violation.
- e. The appeal request will be considered to determine if the appeal documentation meets the criteria for an appeal consideration. If the appeal is determined to meet the criteria for considerations, the non-appealing party (responding or reporting party) shall be provided a copy of the appeal and have two business days to file a rebuttal of the appeal (the non-appealing party may waive that right). The appeal documentation along with any rebuttal is then forwarded for consideration to an Appeal Review Panel.
- i. Appeal Review Panel (Review Panel) is convened by the Vice President (or designee). All efforts will be made to convene the Review Panel within five (5) business days of receipt of the appeal and accompanying documentation.
  - ii. Review Panel members will include up to three (3) KCC employees and may include up to two (2) currently enrolled students. No person who is personally involved in a particular case will be a member of the Review Panel to consider that case. The Appeal Review Panel shall be provided with the relevant and material portions of the investigation file for review including the investigator's report and the documentation for the appeal, as well as a rebuttal statement, if filed.
  - iii. The Appeal Review deliberations are closed to the public to maintain confidentiality. The Appeal Review Panel may request to speak with the reporting party(s), responding party(s), witnesses, or any other person to clarify information.
- f. The decision of the Appeal Review Panel may include:
- i. Refer the case back to the Title IX Coordinator(s) based on:
    - 1) New evidence submitted in the appeal which could substantially impact the original finding or sanction.
    - 2) Procedural or substantial error requiring further action to correct the error.
  - ii. Uphold the determination(s) and sanction(s).
  - iii. Uphold the determination(s) but reduce the sanction(s) because the sanction(s) are substantially disproportionate to the determination(s).
- g. All decisions of the Appeal Review Panel will be accompanied by the rationale for their decision provided in sufficient detail for the party(s) to have a clear understanding of the basis for the decision.
- 1) The party(s) shall be notified of the Appeal Review Panel decision in writing within five (5) business days via KCC email.

- 2) The decision of the Appeal Review Panel is final.

## **INFORMAL RESOLUTION**

In lieu of resolving a Complaint through KCC's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. KCC will inform the parties in writing of any informal resolution process it offers and determines is appropriate, if any.

KCC will not offer informal resolution to resolve a Complaint when such a process would conflict with Federal, State, or local law. Before the initiation of an informal resolution process, KCC will explain in writing to the parties:

- a. The allegations;
  - 1) The requirements of the informal resolution process;
  - 2) That any party has the right to withdraw from the informal resolution process and initiate or resume grievance procedures at any time before agreeing to a resolution;
  - 3) That if the parties agree to a resolution at the end of the informal resolution process, they cannot initiate or resume grievance procedures arising from the same allegations;
  - 4) The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
  - 5) What information KCC will maintain and whether and how KCC could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed.

## **DEFINITIONS**

Complaint: an oral or written request to College that objectively can be understood as a request to investigate and make a determination about alleged discrimination under Title IX or in one of its education programs or activities.

Complainant:

A student or employee of KCC who is alleged to have been subjected to conduct that could constitute Sex Discrimination under Title IX; or

A person other than a student or employee of KCC who is alleged to have been subjected to conduct that could constitute Sex Discrimination under Title IX at a time when that individual was participating or attempting to participate in KCC's education program or activity.

Confidential Employee:

An employee of KCC whose communications are privileged or confidential under Federal or State law.

An employee of KCC whom KCC has designated as confidential under this part for the purpose of providing services related to Sex Discrimination; or

An employee of KCC who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about Sex Discrimination.

Conduct Subject to the School's Disciplinary Authority: This includes, but is not limited to, conduct that occurs on school property; through use of school property (e.g., during online learning or when using the College's network or computer systems); at school-sponsored events or activities; and in off-campus settings, if the conduct is sufficiently serious or severe that it could contribute to a hostile environment within its programs or activities. This includes conduct that occurred outside of the United States if that conduct is alleged to be contributing to a hostile environment in KCC's education program or activity.

FERPA: Family Education Rights and Privacy Act; 20 U.S.C. § 1232g, *et seq.*

Hostile environment harassment: Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive, and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the KCC's education program or activity.

Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- The degree to which the conduct affected the Complainant's ability to access the KCC's education program or activity;
- The type, frequency, and duration of the conduct;
- The parties' ages, roles within the KCC's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other Sex-based Harassment in the KCC's education program or activity.

Quid Pro Quo harassment: An employee, agent, or other person with authority to provide an aid, benefit, or service under the KCC's education program or activity explicitly or impliedly conditions the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

Preponderance of the Evidence: The greater weight of the evidence; not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. (Black's Law Dictionary definition (11th ed. 2019)).

Respondent: a person who is alleged to have violated KCC's prohibition on Sex Discrimination.

Sex-based Harassment: a form of Sex Discrimination, which includes *quid pro quo*, hostile environment harassment, and certain, specific offenses referenced in 34 C.F.R. § 106.2. Not all Sex Discrimination is Sex-based Harassment.

Sex Discrimination: Discrimination on the basis of sex, which includes sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Sex Discrimination includes, but is not limited to, Sex-based Harassment.

Supportive Measures: Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

- Restore or preserve that party's access to KCC's education program or activity, including measures that are designed to protect the safety of the parties or KCC's educational environment; or
- Provide support during KCC's grievance procedures or during the informal resolution process.

Title IX: Title IX of the Education Amendments of 1972 (Pub. L. 92–318; 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688, 1689), as amended.

Title IX Coordinator: the employee who has been designated to coordinate the College’s efforts to comply with its responsibilities under Title IX.

## **FORMS**

Report an Incident form located online at [www.kellogg.edu/reportanincident](http://www.kellogg.edu/reportanincident).

## **ROLES AND RESPONSIBILITIES**

In addition to the responsibilities outlined in 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 procedure is followed appropriately and within the federal regulations. Responsible Employees as outlined in this Policy are required to report alleged violations of this Policy.

## **PERSONS/DEPARTMETNS AFFECTED**

All employees and students

## **RELATED POLICIES**

OP 12.001	Employee Standards of Conduct
OP 12.007	Title IX Policy and Grievance Procedures for Sex Discrimination Complaints by Employees and Other Individuals
OP 30.001	Student Code of Conduct
OP 30.004	Title IX Non-Discrimination Policy and Grievance Procedures for Complaints of Sex Discrimination (Not Sex-Based Harassment) by Students

## **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.

**APPROVAL DATE:** June 19, 2024