

## Procedure 3.3.1A-P Sexual Misconduct Procedure

### Appendix B: Student Responsibility Assessment and Resolution Process

#### **A. Overview**

Following the Initial Assessment and/or investigation of a complaint as described in Appendix A, complaints involving student Respondents may be referred to a Responsibility Assessment Committee (RAC) for a decision as to responsibility and sanctions.

#### **B. Establishing a Responsibility Assessment Committee**

The committee typically consists of three members drawn from the sixteen local Title IX Coordinators. All committee members will be assigned by the RAC Coordinator prior to the investigation process. The RAC Coordinator is an attorney in the Office of Legal Services and is prohibited from serving on the committee. The RAC Coordinator provides oversight of the entire process, to reduce the possibility of bias, and to ensure legal sufficiency of the process.

#### **C. Notice of Final Determination Meeting**

Prior to submission to the RAC, the Complainant and the Respondent will each have the opportunity to review all investigative documents (the investigation report, any witness statements or interviews, statements or interviews by both parties, and any other documentary information that will be presented to the RAC), subject to the privacy limitations imposed by state and federal law, at least six (6) business days prior to the committee's receipt of the investigative materials. The names of the committee members and the date of the Final Determination Meeting will be provided to the Complainant and Respondent at this time.

#### **D. Request for Removal of Committee Member**

Either party may submit a written request to the RAC Coordinator that a member of the RAC be removed. The request must clearly state the grounds to support a claim of bias, conflict of interest, or inability to be fair and impartial. This request must be submitted to the KCTCS Office of Legal Services, 300 North Main Street, Versailles, KY 40383 within three (3) business days of receipt of the Notification Letter. The right of both parties to make this request will be included in the Notification Letter. Seeking removal of and/or being granted removal of a committee member may result in a delay of the date of the subsequent proceedings. If a delay is necessary, a new Notice of Final Determination Meeting will be issued to both parties.

## **E. Review of the Report of Findings**

If neither Complainant nor Respondent request removal of a committee member, the investigator will forward all investigative documents to the RAC Coordinator and the RAC members.

The RAC Coordinator will review the investigative report, any witness statements and any other documentary evidence to determine whether the proffered information contained therein is relevant and material to the determination of responsibility given the nature of the allegation. In general, the RAC Coordinator may redact information that is irrelevant, more prejudicial than probative, or immaterial. The RAC Coordinator may also redact statements of personal opinion, rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty.

The RAC members will have five (5) business days to review the Report of Findings and investigative documents independently. Each RAC member must notify the Hearing Coordinator by the sixth business day as to whether or not he/she feels there is sufficient or insufficient information to form an opinion of responsibility. If two of the three panelists determine that there is insufficient information, the RAC Coordinator may take a vote to reopen the investigation until sufficient information has been gathered.

All parties involved in a RAC are required to keep the information learned in preparation private. The investigative documents will be posted to a secure website for review by the committee members and RAC Coordinator. Any breach of this duty of confidentiality is subject to disciplinary action by KCTCS.

## **F. Final Determination Meeting**

The Final Determination Meeting will be guided by the RAC Coordinator and will allow the panelists to state their opinion and take a final vote. The RAC must reach a decision of responsibility by majority vote.

The RAC will determine a Respondent's responsibility by a preponderance of the evidence. This means that the committee will decide whether it is "more likely than not," based upon all relevant information, that the Respondent is responsible for the alleged violation(s).

If a determination of responsibility is found, the RAC Coordinator will lead the panel through a discussion of recommended sanctions. A final vote on sanctions will be taken by the RAC Coordinator to include in the Final Determination Report.

## **G. Final Determination Report and Notice**

At the conclusion of the final determination meeting, the RAC Coordinator will write a final determination report that will include a summary of the findings of fact, a finding of responsibility or no responsibility, and the basis/rationale for the decision of the hearing panel, making reference to the evidence that led to the finding. The report will include recommended sanctions based on the findings of fact and responsibility. The final determination report and recommended sanctions are directed to the local Title IX Coordinator for presentation to the College President/CEO.

The local Title IX Coordinator will prepare the Final Determination Notice in conjunction with the College President/CEO. This written notice will be sent to both the Complainant and Respondent simultaneously via email or regular U.S. mail. The written Final Determination Notice will be provided to both parties within two (2) business days of the receipt of the Final Determination Report by the local Title IX Coordinator.

Both parties have the right to be informed of the outcome and any sanctions attached to the outcome.

KCTCS reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. KCTCS may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is not dependent, KCTCS will not contact parents/guardians without the expressed permission of the student, unless where there are situations that may reflect a significant and articulable health and/or safety risk. KCTCS also reserves the right to designate which KCTCS officials have a need to know about individual conduct complaints pursuant to FERPA requirements.

## **H. Sanctions**

A RAC that finds a Respondent responsible for a violation of this policy may impose sanctions. Sanctions may be issued individually, or a combination of sanctions may be imposed.

The RAC may deviate from the range of recommended sanctions, based upon a full consideration of the following factors:

- (1) the Respondent's prior discipline history;
- (2) how KCTCS has sanctioned similar incidents in the past;
- (3) the nature and violence of the conduct at issue;
- (4) the impact of the conduct on the Complainant;
- (5) the impact of the conduct on the community, its members, or its property;
- (6) whether the Respondent has accepted responsibility for his/her actions;

- (7) whether the Respondent is reasonably likely to engage in the conduct in the future;
- (8) the need to deter similar conduct by others;
- (9) any other mitigating or aggravating circumstances, including institutional values.

The RAC may also consider restorative justice outcomes that, taking into the account of the safety of the community as a whole, allows a Respondent to learn about the origins of his/her behavior, his/her responsibility for this behavior, and how s/he can change this behavior.

In appropriate cases, a RAC may determine that the conduct was motivated by bias, insofar as a Complainant was selected on the basis of his or her race, color, ethnicity, national origin, religion, age, disability, or gender; however, the gender of the Complainant is insufficient to create the assumption of bias. Where the RAC determines that student misconduct was motivated by bias, the panel may elect to increase the sanction imposed as a result of this motivation.

Sanctions that may be imposed under this policy include:

1. Reprimand: Official written or oral statement to the student that he or she is guilty of violating a college regulation. A reprimand warns that any further such actions may result in a more severe sanction.
2. Restitution: Compensation to the college for damages to college property.
3. Social Probation: Status given to less serious policy violations, and in some cases, a restriction of privileges for a specified time.
4. College/Community Service: Service to the college or community of up to 16 hours be served within a specified time frame.
5. Educational Sanction: An educational sanction requiring attendance or participation in a pre-arranged class, program, or activity designed to prevent or deal with high-risk behavior.
6. Counseling: Student may be referred to counseling evaluation on appointment by Counseling Services.
7. Eviction: Forced removal from a classroom or other college property.
8. College Probation: Status that carries a severe warning that any further violation of college regulations that may result in the student going before the College Appeals Board for consideration of suspension or expulsion. This may include restrictions of privileges for a specified period of time.
9. Suspension: Forced withdrawal from the college for a specified period of time or until stated conditions have been met as determined by the College Appeals Board. College will place the Student Dean Hold service indicator for no future enrollments at the Home College or other KCTCS college during the specified period of time or until stated conditions had been met.
10. Immediate Suspension: A student may be suspended immediately when:
  - a. In the judgment of the chief executive officer (upon consultation with the chief student affair's officer), the presence of the student poses a serious threat to persons and/or property provided informal opportunity is first given to the

student, except in the case of exigent circumstances, to discuss the matter and possible resolution.

- b. The student refuses to cease disruptive behavior or conduct in violation of this policy after direct orders from the chief executive officer (upon consultation with the chief student affairs officer).
- c. When such suspension is involved, the student must leave the campus immediately. Students refusing to do so will be removed by law enforcement authorities and charged with trespassing.

When a student is placed on immediate suspension, a disciplinary hearing will be held at the earliest reasonable time (see [Code of Student Conduct](#) Section 4.C.3 Immediate Temporary Suspension).

11. Expulsion: Permanent, forced withdrawal from the college as determined by the College Appeals Board.

Other sanctions may be imposed instead of, or in addition to, those specified here. Service, education or research projects may also be assigned. More than one of the sanctions listed above may be imposed for any single violation.

## **I. Appeals**

Either party may appeal the final outcome in writing to the college Title IX Coordinator. The appeal must be filed in writing within five (5) business days of receiving the written outcome. The appeal will be reviewed in an impartial manner by the System Office Title IX Committee, in consultation with the college Title IX Coordinator. The appeal shall consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal.

The Complainant and/or Respondent may appeal only the parts of final outcome directly relating to him/her. Dissatisfaction with the outcome of the hearing is not grounds for appeal. The only grounds for appeal are:

- A procedural or substantive error occurred that significantly affected the outcome of the hearing panel proceedings (e.g. substantiated bias, material deviation from established procedures, etc.)
- Discovery of new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction (a summary of this new evidence and its potential impact must be included).

The receipt of the appeal will be acknowledged in writing (which can include email) by the college Title IX Coordinator. Each party will be given the opportunity to respond in writing to the other party's appeal. Any response by the opposing party must be submitted to the college Title IX Coordinator within three (3) business days from receipt of the appeal. The appeals documents from each party will be considered together in one appeal review process.

In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and

appropriately. The college Title IX Coordinator shall first consider whether the appeal is timely filed and if so, whether the appeal is properly framed based on the two grounds. If the college Title IX Coordinator, in consultation with the System Title IX Committee, determines that the appeal is not properly framed, the appeal will be denied.

If the appeal is based on procedural or substantive error, the RAC Coordinator may return the complaint to the original RAC with instructions to reconvene to cure the error, or in rare cases where the error cannot be cured, the RAC Coordinator can ask that a new assessment be conducted by a newly constituted RAC. In the case of new and relevant information, the RAC Coordinator can recommend that the case be returned to the original RAC to assess the weight and effect of the new information and render a determination after considering the new facts.

Appeals are not intended to be full rehearing of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. Appeal decisions are to be deferential to the original committee, making changes to the findings only where there is clear error.

Sanctions imposed are implemented immediately unless the System Office Title IX Committee stays implementation in extraordinary circumstances, pending the outcome of the appeal. Pending graduation, study abroad, internships, or other events do not typically constitute extraordinary circumstances. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

The college Title IX Coordinator will communicate a written appeal decision from the RAC to the Complainant and Respondent within fifteen (15) business days from the date of the submission of all appeal documents by both parties. Appeal decisions are final unless the sanction is expulsion. If the Respondent is appealing a sanction of expulsion, he/she may submit a subsequent appeal in accordance with [Code of Student Conduct](#) Section 4.E.ii.

#### **J. Integrity of Proceedings**

These procedures are entirely administrative in nature and are not considered legal proceedings. Neither party may record the proceedings, neither audio nor video, nor is formal legal representation allowed. Attorneys may serve as advisors but may not take an active role in any proceedings.