

## Procedure 3.3.1A-P Sexual Misconduct Procedure Appendix A: Assessment and Investigation Process

### A. Overview

Upon receipt of a report of violation of the Sexual Misconduct Procedure, the college Title IX Coordinator must immediately notify the System Office Title IX Committee. The SO Title IX Committee will assist in the review, investigation and resolution of reports. Following the initial assessment, the Committee will recommend further action for resolution of the report.

The initial steps for resolution of a complaint are the same whether the Respondent is a student, employee, or guest. Employee and guest Respondents will be processed in accordance with [KCTCS employment policies and procedures](#). Student Respondents will be processed in accordance with the [KCTCS Student Code of Conduct](#) and [student policies](#) and the Hearing Procedures for Student Respondents (see Appendix B).

### B. Initial Assessment

In every report of sexual harassment or misconduct, KCTCS will make an immediate assessment of any risk of harm to individuals or to the campus community and will take steps necessary to address those risks. These steps may include interim protective measures to provide for the safety of the individual and the campus community.

The SO Title IX Committee assists in the review, investigation and resolution of reports. Members of this interdepartmental team may include, but are not limited to, representatives from Legal Services, Crisis Management, Student Affairs, Human Resources, and/or Academic Affairs. Composition of the team will be limited to a small circle of individuals who “need to know” in order to implement procedures under this policy.

In consultation with the college Title IX Coordinator, the System Office Title IX Committee will conduct an initial Title IX Assessment in order to provide an integrated and coordinated response to reports of sexual harassment and sexual misconduct. The assessment will consider the nature of the report, the safety of the individual and of the campus community, and when, possible, the Complainant’s expressed preference for resolution.

After consideration of the above factors, KCTCS may choose to pursue an informal resolution, which may include a remedies-based approach (reserved for less egregious violations). If the violation warrants, the SO Title IX Committee will refer the matter for investigation.

Upon completion of the investigation, the SO Title IX Committee reviews the investigative report to assess the strength of evidence and options for resolution. The SO Title IX Committee will discuss its recommendations with the college Title IX.

### **C. Investigation**

When the Initial Title IX Assessment concludes that an investigation is required, KCTCS will designate an investigator(s) from System Office with specific training and experience investigating allegations of sexual harassment and sexual misconduct. KCTCS may use a team of two investigators, which may include the College Human Resources Director with a System Office investigator, or two System Office investigators.

The investigation will be a fair and reliable fact-gathering process. The investigation will be conducted thoroughly, impartially, and fairly. The investigation will be respectful of individual privacy concerns, but must be performed in a manner that will ensure KCTCS's compliance with all state and federal laws, including provision of due process to the Respondent.

An investigation will normally include interviews with the Complainant and with the Respondent. Pertinent witnesses may be interviewed. Interviews may be supplemented by the gathering of any physical, documentary or other evidence, if applicable. Both Complainant and Respondent will be given the opportunity to present witnesses or other evidence.

At the request of law enforcement, KCTCS may agree to defer its Title IX fact gathering until after the initial stages of a criminal investigation. KCTCS will nevertheless communicate with the Complainant regarding Title IX rights, procedural options and the implementation of interim measures to assure safety and well-being. KCTCS will promptly resume its Title IX fact gathering as soon as law enforcement permits.

KCTCS will seek to complete the investigation within 20 (twenty) business days of receiving the complaint. This time frame may be extended depending on the circumstances of each case. At the conclusion of the investigation, the investigators will forward the report to the System Office Title IX Committee for review and evaluation.

Information gathered during the review or investigation will be used to evaluate the responsibility of the Respondent, provide for the safety of the Complainant and the campus community, and impose remedies as necessary to address the effects of the conduct cited in the report. Where there is sufficient information set forth that, if proven, would constitute a violation of policy, KCTCS will have the discretion to institute Formal Resolution proceedings against the Respondent. At the conclusion of the investigation, KCTCS will notify the Complainant and the Respondent in writing that the investigation is complete. Notifications will include information about next steps in the process.

The college Title IX Coordinator will document each report or request for assistance in resolving a case involving charges of sexual misconduct, whether formal or informal, and will review and retain copies of all reports generated as a result of investigations. These records will be kept confidential to the extent permitted by law.

## **D. Investigation of Complaints involving Students**

### *1. Notice of Charges*

If the Initial Assessment contains sufficient information to suggest a violation of the Sexual Misconduct Procedure, and the Complainant wishes to pursue disciplinary action, KCTCS will send a written Notification Letter to both the Complainant and the Respondent. The Notification Letter provides each party with a brief summary of the conduct at issue, the specific provision of the policy violations that are alleged to have taken place, and details about the process moving forward. The Notification Letter will also disclose the right of both the Complainant and Respondent to have advisors or support persons throughout the investigatory and disciplinary process. If either the Complainant or the Respondent elects to have advisors, the advisor is encouraged to accompany the Complainant/Respondent to all interviews.

### *2. Investigation*

An investigation will be conducted as described in Section D above.

### *3. Advisors*

The Complainant and the Respondent may choose to be assisted by an advisor of their choice during the process. The advisor may accompany the student to any investigative or administrative meeting that is part of this process.

The inability to accommodate the advisor's schedules shall not cause undue delay to the process. If a meeting cannot be scheduled with the advisor in a reasonable amount of time, the student may have to choose a different advisor for that meeting.

The advisor cannot be a witness in the proceedings. The advisor is a silent and non-participating presence who is there solely to observe and provide moral support during the interviews. The advisor is not to address the interviewers, except to request a short recess if one of the parties requires a break.

Absent extenuating circumstances, witnesses and others involved in an investigation are not entitled to have an advisor present.

**Attorney Advisors/Outside Agreements:** The Complainant and the Respondent both have the right to have an attorney present during the investigatory process as the advisor. A Complainant or Respondent may choose to seek the advice and assistance of an attorney at his/her own expense, but the attorney may not actively participate in investigatory interviews, informal or formal resolution proceedings, or the appeals process. Attorneys, including family members acting as attorneys, may be present during this process, but they are not permitted to address, question or cross-examine the investigators. Additionally,

KCTCS will not recognize or enforce agreements between the parties outside of these procedures.

#### *4. Witnesses*

The Complainant and the Respondent have the right to present witnesses to be interviewed by the investigator(s). Witnesses must have observed the conduct in question or have information relevant to the incident and cannot be called solely to speak about an individual's character. During the investigatory process, the investigators will determine if the proffered witness can provide relevant information and if there is sufficient justification for including witness statements in the report.

#### *5. Respondent Pleading the Fifth*

If a Respondent refuses to participate in the investigation to prevent the possibility of incriminating herself/himself during the process due to pending legal action, KCTCS will proceed, but will not infer an admission of guilt from that action.

### **E. Informal Resolution**

Informal resolution is a remedies-based, non-judicial approach designed to eliminate a hostile environment without taking disciplinary action against a Respondent. Where the Title IX assessment concludes that informal resolution may be appropriate, KCTCS will take immediate action to protect the rights of the Complainant and remediate and correct the policy violations leading to the complaint. Examples of protective remedies may include but are not limited to:

- referral to counseling services and other resources
- rescheduling of exams or assignments (in conjunction with appropriate faculty)
- no-contact letter
- limited access to college facilities or organizations pending resolution of the report
- provision of an escort on campus property
- temporary work reassignment
- temporary class schedule reassignment
- administrative leave during the investigation and resolution
- immediate temporary suspension from the college during the investigation and hearing process
- interim volunteer duty reassignment
- suspension of volunteer duty during the investigation; report of the matter to local law enforcement in the jurisdiction in which the college is located
- ban from college location(s)
- report of the matter to local law enforcement in the jurisdiction in which the college is located
- KCTCS further reserves the right to apply any other remedy that can be tailored to the involved individuals to achieve the goals of this policy

Other potential remedies include targeted or broad-based educational programming or training, direct confrontation of the Respondent and/or indirect action by the Title IX Coordinator or KCTCS. Depending on the form of informal resolution used, it may be possible to maintain the Complainant's anonymity.

KCTCS will not compel a Complainant to engage in mediation, to directly confront the Respondent, or to participate in any particular form of informal resolution. Mediation, even if voluntary, may not be used in cases involving sexual violence or assault. The decision to pursue informal resolution will be made when KCTCS has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in informal resolution is voluntary, and a Complainant can request to end informal resolution in favor of a formal resolution at any time.

The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution. Informal resolution will typically be completed within forty-four (44) business days of the initial report. This time frame may be extended depending on the circumstances of each case.

## **F. Formal Resolution**

When an investigation demonstrates that sufficient evidence exists that a violation of policy and procedure has occurred, Respondents will be subject to disciplinary action based on their relationship to KCTCS.

- For a *student Respondent*, disciplinary action may be taken by the student's home college following a finding of responsibility by the Responsibility Assessment Committee. (See Appendix B)
- For an *employee Respondent*, disciplinary action may be taken by the supervisor in accordance with employment policies and procedures.
- For a *guest Respondent*, KCTCS will take the necessary action to ensure the policy violation does not recur and, if appropriate, involve local law enforcement.

## **G. Time Frame for Resolution**

KCTCS seeks to resolve all reports within 60 days of the initial report. All time frames expressed in this policy are meant to be guidelines rather than rigid requirements. Extenuating circumstances may arise that require the extension of time frames, including extension beyond 60 days. Extenuating circumstances may include the complexity and scope of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening school break or vacation, or other unforeseen circumstances.

In general, a Complainant and Respondent can expect that the process will proceed according to the time frames provided in this policy. In the event that the investigation and resolution exceed this time frame, KCTCS will notify all parties of the reason(s) for the delay and the expected adjustment in time frames. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

At the conclusion of the Title IX assessment, the Title IX Committee and College Title IX Coordinator will determine the appropriate manner of resolution and, if appropriate, refer the report for further investigation, Informal Resolution or Formal Resolution.

#### **H. Records**

The College Title IX Coordinator will retain records of all reports and complaints, regardless of whether the matter is resolved by means of Title IX assessment, informal resolution or formal resolution. Complaints resolved by means of Title IX assessment or informal resolution are not part of a student's conduct file or academic record or of an employee's personnel record.

Affirmative findings of responsibility in matters resolved through formal resolution are part of a student's conduct record and an employee's personnel record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student's conduct record or an employee's personnel record.

The conduct files of students who have been suspended or expelled from KCTCS are maintained by Student Affairs indefinitely. Conduct files of students who have not been suspended or expelled are maintained by Student Affairs until at least five years after the student's last date of attendance. Further questions about record retention should be directed to the System Office Title IX Committee.

## 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.