

Policy: 3.03

Title IX Sexual Harassment and Sexual Violence

Purpose

Kansas City Kansas Community College (“KCKCC”) is committed to fostering an environment in which all members of our community are free from sexual misconduct in any form. The College expects that all interpersonal relationships and interactions will be based on mutual respect, open communication, and clear consent. Sexual harassment is a violation of professional ethics as well as a violation of federal and state law. KCKCC is committed to complying with Title IX of the Education Amendments of 1972 and its implementing regulations, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act of 2013 (VAWA), and the Kansas Act Against Discrimination.

Scope

The Sexual Harassment and Sexual Violence Policy applies to Title IX Sexual Harassment as defined below that occurs in the College’s Education Programs or Activities and that is committed by any student, faculty member, staff member, or third-party affiliate who has a formal (including contractual) relationship with the College community.

As defined by the U.S. Department of Education “(DOE”) the College’s Education Programs or Activities include locations, events, or circumstances in the United States in which KCKCC exercised substantial control over both the Respondent (the person accused of violating the policy) and the context in which the alleged violation occurred, including any building owned, controlled, or officially recognized by KCKCC.

While KCKCC prohibits all forms of discrimination and harassment, including sexual misconduct, this policy applies only to Sexual Harassment under Title IX regulations issued by the DOE that went into effect August 14, 2020 requiring the College to follow a specific grievance process in response to conduct covered by the regulations. Sexual Harassment alleged to have occurred on or after August 14, 2020 will be subject to the College’s policy in place at the time of the alleged conduct.

Discriminatory and/or harassing misconduct falling outside of the purview of this policy may be addressed by other College policies, which may include but are not necessarily limited to the College’s Policy on Discrimination and Harassment (5.0), other employee policies, or the Student Code of Conduct.

Definitions

Actual Knowledge: Notice to the Title IX Coordinator, Deputy Coordinator or an official with authority to institute corrective measures on the College’s behalf establishes actual knowledge and triggers the College’s response obligations.

Advisor: The Advisor is someone who each party chooses to provide support and guidance through the grievance process. This person may be a friend, family member, attorney, or other individuals with whom the party has a trusted relationship.

Appellate Administrator: The appellate administrator reviews the basis of appeal and evidence to determine whether to uphold or change the outcome decision of the Decision-maker. At KCKCC, that person is the Vice President of Student Affairs.

Allegation: An allegation is a claim that someone has done something wrong.

Business Day: A business day is any day in which normal business operations are conducted.

Complainant: The complainant is the alleged victim of sexual harassment or violence.

Conduct File: A conduct file is a printed, written, or digital file which may include, but is not limited to, incident report(s), correspondence, academic transcript, witness statements, and student conduct history. A Title IX conduct file is retained by the College for seven years.

Contractor: A contractor is a person or company with whom KCKCC enters into an agreement to provide materials or labor to perform a service or do a job.

Decision Maker: The decision-maker is the person who runs the Title IX hearing and determines the outcome. The decision-maker could be the Dean of Student Services.

Designee: A designee is another person to whom a report of gender-based or sexual misconduct can be made besides the Title IX Coordinator or Deputy Coordinator.

Employee: An employee is a person hired by the College who is paid a salary or wage for services.

Evidence: Evidence is information gathered for the purposes of supporting or opposing an allegation. It can take the form of testimony, data, video, social media, etc. *Inculpatory evidence* is evidence that supports the allegation of the complainant. *Exculpatory evidence* is favorable to the respondent.

Formal Complaint: A formal complaint is a written grievance by the Complainant or Title IX Coordinator.

Incident Database: The College will maintain records in Maxent, an *incident database* software for managing behavior records for seven years.

Investigator: An investigator is a trained person who makes formal inquiry into an allegation.

Program or Activity: A program or activity is anything a person does or participates in that is sanctioned or controlled by the College, such as clubs, events, athletics, classes, work, etc.

Remedies: Remedies are ways the College counteracts or eliminates behaviors of gender-based or sexual misconduct. When a Respondent is found, responsible remedies are designed to restore or preserve the complainant's equal access to education.

Respondent: The respondent(s) is the person against whom the complaint is alleged.

Sanctions: Sanctions are disciplinary measures, such as required counseling, warning, or other consequences, imposed on the Respondent once he or she is found responsible.

Standard of Evidence: KCKCC uses Preponderance of Evidence as the standard by which a Respondent is found responsible or not responsible.

Student: A student is someone who has been admitted to the College and is enrolled or seeking to enroll in KCKCC courses.

Supportive Measures: Supportive measures are actions the College may take that are designed to restore or preserve equal access to education without unreasonably burdening the other party, which may include

measures designed to protect the safety of parties or the educational environment or deter sexual harassment. Examples of supportive measures include, but are not limited to: free counseling, schedule changes, housing reassignment, and other forms of assistance.

Testimony: Testimony is a formal written or spoken statement.

Third Party: A third party is someone other than the Complainant who reports an allegation of sexual misconduct.

Vendor: A vendor is a person or company who sells products to the College.

Volunteer: A volunteer is a person who provides service(s) for the College without being paid.

Witness: A witness is someone who has knowledge about the case at hand.

Policy Statement

Title IX of the Education Amendments of 1972 includes three categories of misconduct on the basis of sex: *quid pro quo* harassment by an employee; severe, pervasive, and objectively offensive unwelcome conduct of a sexual nature; and *Sexual Assault, Dating Violence, Domestic Violence, or Stalking* as defined under the Clery Act and VAWA. Any person alleged to be in violation of this policy is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

Prohibited Conduct

As further defined below, Title IX Sexual Harassment includes *Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking*. Prohibited conduct that is not covered by this policy may be addressed by other College's policies, including but are not necessarily limited to the College's Policy on Discrimination and Harassment (5.0), other employee policies, or the Student Code of Conduct. An act may violate one or more parts of this policy or one or more College policies.

Discrimination: Refers to unfair or unequal treatment of an individual (or group) based on certain characteristics. Discriminatory Harassment is verbal or physical conduct that has the purpose or effect of creating an intimidating, hostile or offensive environment.

Title IX Sexual Harassment: Conduct on the basis of sex that satisfies one or more of the following:

- **Quid Pro Quo Sexual Harassment:** A person's submission to unwelcome sexual conduct is implicitly or explicitly made the basis for employment decisions, academic evaluation, grades or advancement, or other decisions affecting participation in a College program or activity; or
- **Hostile Environment Sexual Harassment:** Unwelcome sexual or other sex-based conduct is sufficiently severe, persistent and pervasive that it denies from education, employment, or other programs or activities of the College and creates an environment that a reasonable person would find to be intimidating or offensive.

Title IX Sexual Assault: Title IX Sexual Assault as defined in 20 U.S.C. 1092(f)(6)(A)(v).

Under 20 U.S.C. 1092(f)(6)(A)(v), the term “sexual assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. The Uniform Crime Reporting System includes the following offenses as forcible or nonforcible sex offenses:

- **Sexual Assault – Penetration/Rape:** Without the consent of the complainant, penetration, no matter how slight, of:
 - the complainant’s vagina or anus with any body part or object; or
 - the complainant’s mouth by a penis or other genitalia.
- **Sexual Assault - Fondling/Contact:** Without the consent of the complainant, including instances where the victim is incapable of giving consent because of his/her age and/or because of his/her temporary or permanent mental incapacity:
 - intentionally touching the complainant’s intimate body part (genitals, anus, groin, breast, or buttocks) clothed or unclothed for the purpose of sexual gratification;
 - making the complainant touch another or themselves on any intimate body part, clothed or unclothed; or
 - touching the complainant with one’s intimate body part, whether the intimate body part is clothed or unclothed.
- **Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of statutory consent.

Domestic Violence: As defined in 34 U.S.C. 12291(a)(8). Under 34 U.S.C. 12291(a)(8), is a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Dating Violence: As defined in 34 U.S.C. 12291(a)(10). Under 34 U.S.C. 12291(a)(10), is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party’s statement with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Stalking: As defined in 34 U.S.C. 12291(a)(30). Under 34 U.S.C. 12291(a)(30), is engaging in a course of repeated conduct directed at a specific person that would cause a reasonable person to (1) fear for the person’s safety or the safety of others; or (2) suffer substantial emotional distress.

- Repeated course of conduct means two or more acts, directed at a complainant including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

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

Retaliation

Retaliation includes, but is not limited to, any form of intimidation, coercion, threats, reprisal or harassment for the purpose of interfering with any right or privilege secured by Title IX . Any person who retaliates against another for submitting a grievance, testifying, assisting, participating or refusing to participate in any manner in an investigation, hearing, or proceeding relating to harassment or violence shall be subject to disciplinary action.

Consent

Consent is affirmative, conscious, voluntary, and revocable. Consent to sexual activity requires of each person an affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person to ensure they have the affirmative consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence do not, alone, constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity.

Incapacitation

Incapacitated is a state which someone cannot make rational, reasonable decisions, does not understand the nature or fact of sexual activity (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction) due to the effect of drugs or alcohol consumption (voluntarily or involuntarily), medical condition or disability, or due to a state of unconsciousness or sleep or other state in which the person is unaware that sexual activity is occurring. When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Alcohol and other drugs impact each individual differently and determining whether an individual is incapacitated requires an individualized determination.

False Information and Bad Faith Complaints

It is a violation of this policy for any person to submit a report or Formal Grievance that the person knows, at the time the report or Formal Grievance is submitted, to be false. It is also a violation of this policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this policy. False Information and Bad Faith Complaints are not subject to the investigation and adjudication processes in this policy; instead, they will be addressed under the appropriate College policies.

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